COMMITMENT
INTEGRITY
LEADERSHIP

July 18, 2023
Report 2022-109

FACT SHEET

Grant Parks *California State Auditor*

CONTACT: *Communications Office* | *(916) 445-0255*

California State University

It Did Not Adequately or Consistently Address Some Allegations of Sexual Harassment

Background

Sexual harassment can cause significant harm to students and employees of universities. Within the California State University (CSU)—a system with 23 campuses, 56,000 employees, and 460,000 students—the Office of the Chancellor (Chancellor's Office) is responsible for overseeing campuses' efforts to address sexual harassment. In accordance with this responsibility, the Chancellor's Office maintains a systemwide policy that requires campuses to take certain actions in response to sexual harassment allegations. Following several high-profile allegations involving CSU employees, the Joint Legislative Audit Committee requested that we assess CSU's handling of sexual harassment complaints against employees at the Chancellor's Office, San José State University, California State University, Fresno, and Sonoma State University. As part of this audit, we reviewed 40 cases of alleged sexual harassment from 2016 through 2022.

Key Recommendations

To protect CSU students and employees from sexual harassment, the Chancellor's Office should do the following:

- Standardize how campuses make and document their decisions about whether sexual harassment allegations warrant a formal investigation.
- Develop additional guidelines for campuses' formal investigations, including how to perform and structure their analyses to establish whether sexual harassment has occurred.
- Ensure that campuses have a process for tracking the timeliness of their cases and that they have adequate resources for conducting timely investigations.
- Establish systemwide requirements for addressing conduct that is unprofessional but does not meet the threshold of sexual harassment.
- Close gaps in its policy to further limit positive references for employees found to have engaged in sexual harassment.
- Require that campuses use the same case management system, track data consistently, and include specific documents in their files for each sexual harassment case.
- Issue comprehensive best practices, including how campuses should survey their communities and increase awareness of options for reporting sexual harassment.
- Conduct regular reviews of campuses to determine whether they are complying with relevant portions of law, CSU policy, and best practices.

Key Findings

- Without sufficient guidance, campuses did not appropriately investigate some allegations of sexual harassment.
  - » Campuses did not document clear rationales for closing 11 of the cases in our selection without conducting a formal investigation.
  - » Seven investigations we reviewed contained deficiencies that caused us to question campuses' determinations that sexual harassment had not occurred.
  - » More than half of the case files we reviewed were missing important documentation, such as relevant evidence or outreach to complainants.
  - » Nearly two-thirds of the investigations we reviewed were untimely.
- Campuses have not always provided adequate discipline or corrective actions.
  - » One campus found an employee responsible for sexual harassment but took no disciplinary or corrective action for more than five years.
  - » CSU lacks a consistent method for addressing unprofessional conduct that does not constitute sexual harassment, and campuses sometimes took no action to address such conduct.
  - » CSU's letter of recommendation policy still allows official positive references in certain cases for individuals found responsible for sexual harassment.
- The Chancellor's Office must take a more active approach to overseeing campuses.
  - » The Chancellor's Office has not standardized data collection across campuses, nor has it issued other key best practices such as ensuring that campuses conduct effective surveys of their communities.
  - » The Chancellor's Office no longer performs regular compliance reviews of campuses.

California State University

It Did Not Adequately or Consistently Address Some Allegations of Sexual Harassment

July 2023

REPORT 2022-109

CALIFORNIA STATE AUDITOR
621 Capitol Mall, Suite 1200 | Sacramento | CA | 95814

916.445.0255 | TTY **916.445.0033**

For complaints of state employee misconduct,
contact us through the **Whistleblower Hotline**:
1.800.952.5665

Don't want to miss any of our reports? Subscribe to our email list at **auditor.ca.gov**

For questions regarding the contents of this report, please contact our Communications Office at 916.445.0255

This report is also available online at www.auditor.ca.gov | Alternative format reports available upon request | Permission is granted to reproduce reports

July 18, 2023
2022-109

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As directed by the Joint Legislative Audit Committee, my office conducted an audit of the California State University (CSU) system to assess CSU's handling of sexual harassment complaints against employees at the Office of the Chancellor (Chancellor's Office), California State University, Fresno, San José State University, and Sonoma State University. In general, we determined that CSU has not adequately or consistently addressed some allegations of sexual harassment.

The CSU Chancellor's Office maintains a sexual harassment policy that governs how each of its 23 campuses responds to reports of sexual harassment. We reviewed 40 cases of alleged sexual harassment by CSU employees and found various problems with campuses' handling of the cases. For example, in the absence of detailed guidelines in CSU's policy, campuses did not document a clear rationale for closing 11 of those cases without formally investigating the allegations. When campuses did conduct investigations, we found significant deficiencies in seven of the cases, which raised questions about their outcomes. Further, campuses did not consistently take disciplinary or corrective action to address problematic behavior. In one case, a campus found a faculty member responsible for sexual harassment, but it took no action for more than five years. After determining that it had missed the statute of limitations for imposing other disciplinary action, such as suspension, the campus only issued a letter reprimanding the individual for his conduct.

The problems and inconsistencies we found during this audit warrant systemwide changes at CSU. In particular, the Chancellor's Office must take a more active approach to overseeing campuses' efforts to prevent and address sexual harassment. It can do so by clarifying and closing gaps in its policies, issuing comprehensive best practices to campuses, collecting and analyzing critical data, and resuming regular reviews of its campuses for compliance with key legal and policy requirements. These efforts would help CSU better protect its students and employees from sexual harassment.

Respectfully submitted,

GRANT PARKS
California State Auditor

Blank page inserted for reproduction purposes only.

Contents

Summary 1

Introduction 5

Chapter 1
The Chancellor's Office Has Not Ensured That Campuses Adequately and Consistently Investigate Allegations of Sexual Harassment 13

Chapter 2
The Chancellor's Office Has Not Always Ensured That Campuses Address Sexual Harassment Through Discipline and Corrective Actions 37

Chapter 3
The Chancellor's Office Must Take a More Active Approach to Preventing and Addressing Sexual Harassment 49

Recommendations 59

Appendix A
Sexual Harassment Reports Against Employees in the CSU System 65

Appendix B
Scope and Methodology 71

Response to the Audit
California State University 75

Blank page inserted for reproduction purposes only.

Summary

Results in Brief

Sexual harassment can cause significant emotional and physical harm to both students and employees of educational institutions. Congress enacted Title IX of the federal Education Amendments of 1972 (Title IX) to eliminate discrimination on the basis of sex, which includes sexual harassment, in educational programs or activities. To comply with Title IX and related state law, the California State University (CSU) Office of the Chancellor (Chancellor's Office) has established a systemwide sexual harassment policy for the university's 23 campuses. However, when we reviewed a total of 40 cases of alleged sexual harassment against employees at three CSU campuses and the Chancellor's Office, we identified numerous problems in the processes the campuses used to address the complaints. Table 1 summarizes these problems. We believe that strengthening the Chancellor's Office's guidance and oversight related to preventing and addressing sexual harassment is critical to resolving the problems we identified and ensuring that campuses provide a harassment-free environment for their students and employees.

Deciding whether to conduct a formal investigation is one of the most critical steps in a campus's process for responding to an allegation. Nonetheless, CSU's sexual harassment policy lacks detailed guidelines about how to make and document these determinations. In the absence of such guidelines, campuses did not document clear rationales for closing 11 of the cases in our selection following an intake and initial assessment process (closing at intake); in those cases, the campuses did not move forward with a formal investigation, even though the cases contained concerning allegations that may have warranted an investigation. In one such instance, a student alleged that a faculty member made inappropriate comments about her body and attractiveness, consistently walked her toward her residence after class, talked about his personal and romantic life, and compared her to women he had dated. The student submitted a detailed written complaint, met with a campus official, and stated that she wanted action taken. However, the campus declined to investigate her report and indicated, without documenting a rationale, that the alleged conduct was "on the border" of the campus's purview under CSU policy. Because the student's complaint appeared to us to allege sexual harassment under that policy, we are uncertain why the campus decided not to conduct an investigation.

We identified significant concerns with the processes campuses used when they did conduct investigations. In fact, seven of the 21 investigations we reviewed contained deficiencies that caused us to question the campuses' determinations that sexual harassment had not occurred. In one such instance, a contractor reported that a faculty member made inappropriate comments to her on multiple occasions, as well as hugged her, touched her hair, and kissed a different staff member without that person's consent. Although the campus substantiated the allegations, it found that the conduct did not meet the definition of *sexual harassment* in CSU's policy—an outcome we question, given the details of the case and deficiencies in the campus's investigative analysis. By providing more specific guidance, such as guidelines that enable investigators to consistently interpret CSU's definition of sexual harassment, the Chancellor's Office could help ensure that campuses' investigations are thorough and their conclusions are reasonable.

Even when campuses determined that an employee's behavior warranted corrective actions or discipline, the campuses did not always follow through on implementing those actions or discipline. For example, campuses closed three of the cases we reviewed at intake but still referred those cases to a different campus department for possible corrective action, such as having a conversation with the accused individual. However, the campuses could not demonstrate that any corrective actions had actually occurred. In two other instances, campuses conducted investigations and found violations of CSU's sexual harassment policy, but they did not initiate appropriate corrective or disciplinary action. For example, one campus found that a male faculty member was responsible for sexual harassment, sexual violence, and stalking, but the campus took no disciplinary or corrective action for more than five years. When it finally took action, it merely issued a letter reprimanding the individual for his conduct, because the campus had determined that it missed the statute of limitations for imposing other disciplinary action. We also found that CSU lacks a consistent method for addressing unprofessional conduct that does not meet the threshold for its definition of *sexual harassment*; consequently, the campuses have handled such instances inconsistently and, at times, inadequately. In one case, even though an investigation concluded that the respondent's conduct did not violate CSU's sexual harassment policy, the report stated that the individual's behavior was inappropriate and that the individual's supervisor should address it; however, we found no evidence that the campus took any action in response.

To address the numerous problems and inconsistencies in the campuses' handling of sexual harassment allegations, the Chancellor's Office must take a more active approach to providing oversight. For example, because the Chancellor's Office has not adequately standardized data collection and analysis across its campuses, it lacks complete and accurate information about the total number of cases of alleged sexual harassment and case-related details. This lack of information limits its ability to identify and address problematic trends. The Chancellor's Office also has not standardized certain best practices for preventing, detecting, and addressing sexual harassment, such as ensuring that campuses take steps to address issues they identify in campus surveys and that campuses expand awareness of their processes for receiving and addressing reports of sexual harassment. Moreover, although the Chancellor's Office began conducting routine reviews of campuses' Title IX practices following our office's 2014 recommendation that it do so, it no longer performs these reviews. An official in the Chancellor's Office provided documents that suggested that it had intended to update its campus review process, but that barriers to doing so included responding to the COVID-19 pandemic and responding to new legislative and regulatory requirements.

Ultimately, the Chancellor's Office has both the responsibility and the authority to ensure that campuses consistently and adequately address sexual harassment concerns. Our recommendations are focused on closing gaps in the Chancellor's Office's policy and guidance so that campuses are better positioned to prevent and mitigate the effects of sexual harassment on their students and employees.

Agency Response

The Chancellor's Office agrees with and will implement the recommendations provided in the audit report.

Table 1
We Reviewed 40 Sexual Harassment Case Files and Identified a Range of Concerns

CASE	RESOLUTION TYPE	INVESTIGATIVE DETERMINATION ABOUT SEXUAL HARASSMENT (AS APPLICABLE)	CONCERNS ABOUT INITIAL ASSESSMENT	CONCERNS ABOUT INVESTIGATION	CONCERNS ABOUT CASE FILE DOCUMENTATION	CONCERNS ABOUT TIMELINESS	CONCERNS ABOUT DISCIPLINE OR CORRECTIVE ACTION	CONCERNS ABOUT UNPROFESSIONAL CONDUCT
Campus A								
Case #1	Investigation	Not Substantiated		X	X	X		
Case #2	Closed at Intake	NA	X					
Case #3	Closed at Intake	NA						
Case #4	Informal Resolution Agreement	NA						
Case #5	Closed at Intake	NA	X					
Case #6	Closed at Intake	NA			X			
Case #7	Investigation	Substantiated			X			
Case #8	Investigation	Substantiated			X			
Case #9	Investigation	Substantiated			X	X		
Case #10	Investigation	Substantiated			X		X	
Case #11	Investigation	Substantiated						
Campus B								
Case #1	Closed at Intake	NA	X		X			
Case #2	Investigation	Not Substantiated				X		X
Case #3	Closed at Intake	NA	X		X		X	
Case #4	Investigation	Not Substantiated		X	X	X		
Case #5	Closed at Intake	NA	X		X		X	
Case #6	Investigation	Not Substantiated		X	X	X		X
Case #7	Closed at Intake	NA	X		X			
Case #8	Investigation	Not Substantiated*		X	X	X		X
Case #9	Investigation	Substantiated						
Case #10	Informal Resolution Agreement	NA			X			
Case #11	Investigation	Substantiated			X			
Case #12	Investigation	Substantiated			X			

continued on next page . . .

CASE	RESOLUTION TYPE	INVESTIGATIVE DETERMINATION ABOUT SEXUAL HARASSMENT (AS APPLICABLE)	CONCERNS ABOUT INITIAL ASSESSMENT	CONCERNS ABOUT INVESTIGATION	CONCERNS ABOUT CASE FILE DOCUMENTATION	CONCERNS ABOUT TIMELINESS	CONCERNS ABOUT DISCIPLINE OR CORRECTIVE ACTION	CONCERNS ABOUT UNPROFESSIONAL CONDUCT
Campus C								
Case #1	Closed at Intake	NA	X		X		X	
Case #2	Closed at Intake	NA	X		X			
Case #3	Closed at Intake	NA	X				X	
Case #4	Investigation	Substantiated				X		
Case #5	Closed at Intake	NA	X					
Case #6	Investigation	Substantiated			X	X		
Case #7	Investigation	Not Substantiated		X		X	X	X
Case #8	Investigation	Not Substantiated		X	X	X		
Case #9	Investigation	Substantiated			X	X	X	
Case #10	Closed at Intake	NA	X					
Campus D								
Case #1	Investigation	Not Substantiated		X		X		X
Case #2	Closed at Intake	NA						
Case #3	Informal Resolution Agreement	NA			X			
Case #4	Informal Resolution Agreement	NA						
Case #5	Closed at Intake	NA						
Case #6	Investigation	Not Substantiated			X	X		
Case #7	Investigation	Not Substantiated			X			
Total Number of Concerns (among 40 cases reviewed)			**11**	**7**	**24**	**13**	**7**	**5**

Source: Campus sexual harassment case files and employee personnel files.

NA: Not applicable.

* The allegations of sexual harassment were not substantiated in this case because the Chancellor's Office reversed on appeal the campus's finding of sexual harassment.

Introduction

Background

Sexual harassment has widespread negative impacts on both students and employees of universities. Definitions of *sexual harassment* vary but generally describe this behavior as unwelcome conduct of a sexual nature, such as inappropriate comments or physical touching.[1] Sexual harassment can cause students or employees emotional and physical harm that interferes with their ability to benefit from or work safely within a university. When the Association of American Universities contracted for a 2019 campus climate survey of students at 33 universities, nearly 42 percent of all students reported experiencing sexually harassing behavior since their initial enrollment. Research also suggests that at least 20 percent to 40 percent of women and 10 percent to 20 percent of men have experienced sexual harassment in the workplace. Studies indicate that much of this behavior goes unreported, for reasons such as fear of retaliation or lack of confidence in institutions' systems for addressing these reports.

Congress enacted Title IX of the federal Education Amendments of 1972 (Title IX) to eliminate discrimination on the basis of sex in any educational program or activity receiving federal financial assistance. The U.S. Department of Education requires universities to comply with Title IX by establishing their own procedures to promptly and equitably resolve sexual harassment complaints at their campuses, but the federal department directs universities to include certain basic requirements in the complaint process. California law also requires universities to undertake specific actions to prevent and address sexual harassment.

The California State University (CSU) is subject to these state and federal requirements. There are 23 campuses in the CSU system, which has about 56,000 employees and serves nearly 460,000 students. In fiscal year 2022–23, the CSU's total budgeted expenditures were nearly $12 billion. This amount includes more than $5 billion in state funds, or about 20 percent of all state funds allocated to higher education in that fiscal year. The university is governed by a 25-member Board of Trustees, which appoints a chancellor and, upon recommendation from the chancellor, appoints the campus presidents. The trustees and the chancellor generally issue systemwide policy and procedures or delegate other officials, such as vice chancellors, to do so. CSU's Office of the Chancellor (Chancellor's Office) has a systemwide Title IX compliance unit (systemwide Title IX unit) to coordinate its efforts to address sexual harassment across all of its campuses. This unit is led by a systemwide Title IX compliance officer who, according to CSU's website, works to end sex discrimination and sexual violence within CSU by coordinating with campus officials and systemwide specialists to guarantee that Title IX policy, programs, and awareness campaigns are up-to-date and effective. The compliance officer's role also includes providing oversight and guidance related to systemwide compliance efforts with CSU policies and federal and state law.

[1] Definitions of *sexual harassment* may also include domestic violence, dating violence, sexual assault, and stalking. For purposes of this report, we use the term *sexual harassment* to refer broadly to unwelcome sexual conduct, including these actions.

The Chancellor's Office Is Responsible for Overseeing Efforts to Prevent and Address Sexual Harassment at CSU

Two Laws Give the Chancellor's Office the Authority to Oversee Campuses' Efforts to Prevent and Address Sexual Harassment

The CSU chancellor and the president of each CSU campus shall have the primary responsibility for ensuring that campus programs and activities are free from discrimination based on age, disability, sex, gender, and other protected characteristics.

Agency heads, such as the CSU Chancellor, are responsible for the establishment and maintenance of a system or systems of internal control, as well as effective and objective ongoing monitoring of the internal controls within their state agencies. This responsibility includes documenting the system of internal controls, communicating system requirements to employees, and ensuring that the system is functioning as prescribed and is modified, as appropriate, for changes in conditions.

Source: Education Code section 66292.1 and Government Code section 13402.

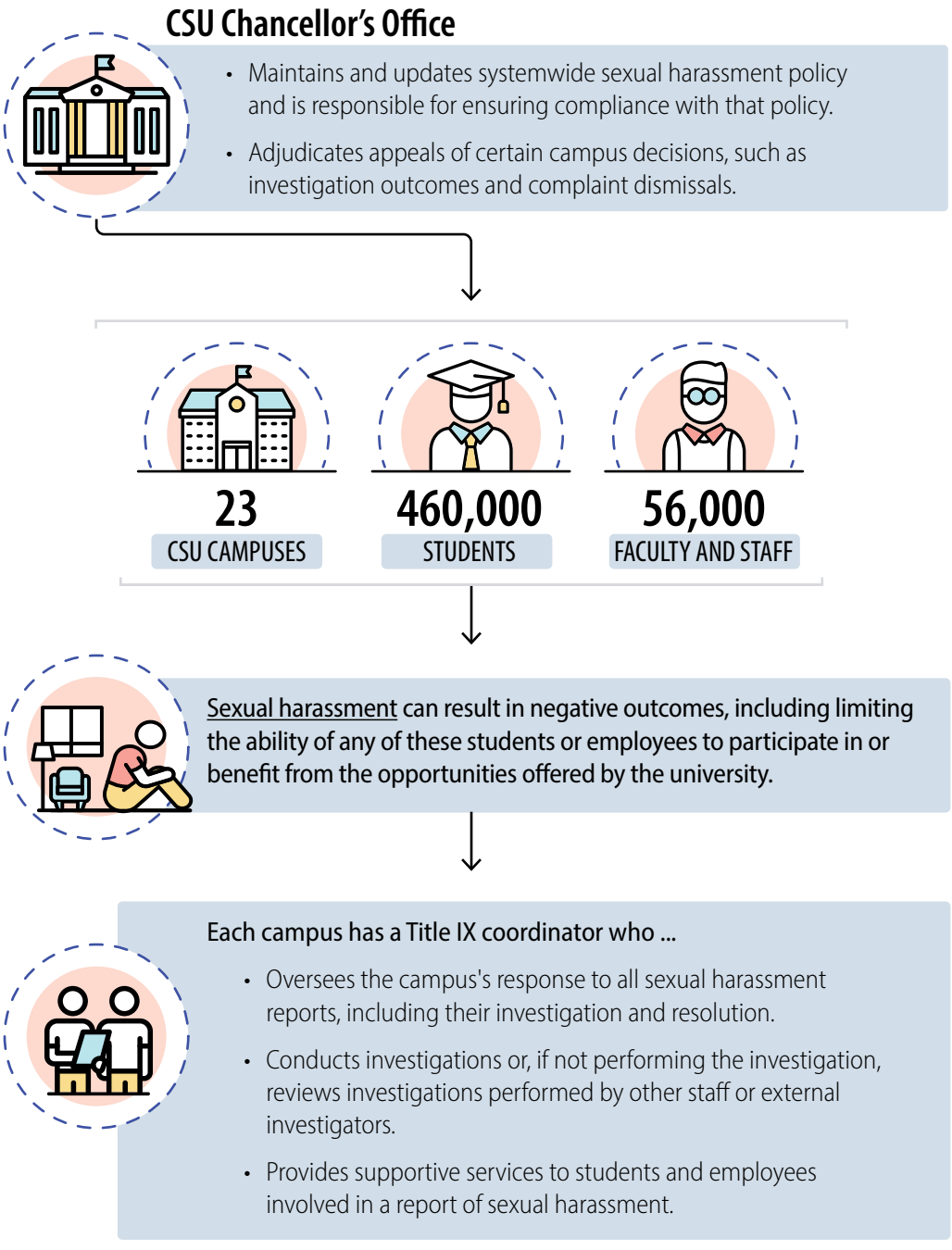
As the text box explains, state law assigns to the CSU chancellor—and, by extension, the Chancellor's Office—and to the president of each CSU campus the responsibility for ensuring that campuses prevent and address sexual harassment in their programs and activities.[2] In accordance with this responsibility, the Chancellor's Office maintains and routinely updates a systemwide nondiscrimination policy that prohibits behavior such as discrimination, harassment, and sexual harassment (sexual harassment policy). As Figure 1 shows, the Chancellor's Office is responsible for ensuring that campuses comply with this sexual harassment policy and that, in alignment with it, they take adequate steps to prevent and address sexual harassment.

CSU's current sexual harassment policy contains requirements and procedures that are more expansive than those under Title IX. In particular, CSU's threshold for sexual harassment is lower than the threshold in federal regulations, as Figure 2 shows. Federal regulations establish some general requirements for universities' responses to reports of sexual harassment, including that universities must respond promptly and in a manner that is not deliberately indifferent, and that they must develop a process for addressing formal complaints of sexual harassment.[3] The regulations also require that universities dismiss formal complaints if the alleged conduct would not constitute sexual harassment as the Title IX regulations define it. In these cases, the regulations make clear that universities are not precluded from taking action to address the conduct using another provision of their own code of conduct.

2 CSU defines *campus* as any of its 23 campuses, each of which has a Title IX coordinator, and the Chancellor's Office, which handles reports against employees of that office or against campus presidents or Title IX coordinators.

3 Federal regulations define *formal complaint* to include certain parameters, such as that it alleges sexual harassment as defined in the regulations, complainants must sign or otherwise indicate that they are the person filing the complaint, and the complaint must include a request for the university to investigate the allegation of sexual harassment. Beyond the requirements in federal regulations, CSU's current policy generally defines the broader term *complaint* as a report that is received by the campus Title IX coordinator that alleges conduct prohibited by CSU's policy. Therefore, we use the terms *complaint* and *report* synonymously to mean allegations of sexual harassment more generally, and we use the term *formal complaint* only when referring to the term defined by federal regulations.

Figure 1
The Chancellor's Office Is Responsible for Ensuring That Campuses Address Sexual Harassment Complaints


CSU Chancellor's Office
• Maintains and updates systemwide sexual harassment policy and is responsible for ensuring compliance with that policy.
• Adjudicates appeals of certain campus decisions, such as investigation outcomes and complaint dismissals.
23
CSU CAMPUSES
460,000
STUDENTS
56,000
FACULTY AND STAFF
Sexual harassment can result in negative outcomes, including limiting the ability of any of these students or employees to participate in or benefit from the opportunities offered by the university.
Each campus has a Title IX coordinator who ...
• Oversees the campus's response to all sexual harassment reports, including their investigation and resolution.
• Conducts investigations or, if not performing the investigation, reviews investigations performed by other staff or external investigators.
• Provides supportive services to students and employees involved in a report of sexual harassment.

Source: CSU's sexual harassment policy, CSU's 2023 *Fact Book,* and information on its website.

Figure 2
CSU's Threshold for Sexual Harassment Is Lower Than the Threshold in Federal Regulations

Summary Definition of Sexual Harassment in CSU Policy*

Unwelcome verbal, nonverbal, or physical conduct of a sexual nature that includes, but is not limited to, sexual advances, requests for sexual favors, offering employment benefits or giving preferential treatment in exchange for sexual favors, or indecent exposure, and any other conduct of a sexual nature where:

a. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting the complainant's education or employment; or

b. The conduct is ***sufficiently severe, persistent, or pervasive*** that it limits the complainant's ability to participate in or benefit from the services, activities, or opportunities offered by the university; or

c. The conduct is ***sufficiently severe, persistent, or pervasive*** that it creates an intimidating, hostile, or offensive environment.

[Emphasis added]

Definition of Sexual Harassment in Title IX Federal Regulations

Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct;

2. Unwelcome conduct determined by a reasonable person to be ***so severe, pervasive, and objectively offensive*** that it effectively denies a person equal access to the university's education program or activity; or

3. Sexual assault, dating violence, domestic violence, or stalking, as defined in federal law.

[Emphasis added]

Source: CSU sexual harassment policy and federal regulations.

* CSU's policy specifies that when investigating allegations that the Title IX coordinator has determined meet the threshold for sexual harassment in federal regulations, the campus must apply the definition in federal regulations rather than the definition in CSU's policy.

Federal Title IX regulations for addressing sexual harassment changed significantly in May 2020. Before the 2020 amendments, the U.S. Department of Education's Office for Civil Rights disseminated now-rescinded policy guidance that outlined circumstances under which sexual harassment may constitute prohibited discrimination. This now-rescinded policy guidance included a lower threshold for determining that conduct constitutes sexual harassment than under the current federal regulations and more detailed descriptions of how to assess possible sexual harassment. The 2020 amendments added definitions of various terms, such as *sexual harassment* and *formal complaint*. The amendments also added new provisions describing the procedures for responding to formal complaints of sexual harassment. These new provisions include a mandatory hearing process following the completion of an investigation; this hearing process determines the outcome of the case when the alleged conduct meets the federal threshold for sexual harassment.

CSU's systemwide Title IX compliance officer indicated that many changes in the legal and regulatory landscape for Title IX over the past several years have generated significant work for the Chancellor's Office, and the officer provided a document outlining this work that included overhauling CSU's policy and coordinating other efforts in response to the 2020 regulatory changes and new federal hearing process. The Chancellor's Office revised previous versions of CSU's sexual harassment policy in March 2019, August 2020, and August 2021 in response to a California court of appeal decision and the changes in federal regulations, and these revised policies after August 2020 included provisions for cases that met the threshold for sexual harassment under the new federal regulations. The Chancellor's Office then issued a new sexual harassment policy in January 2022 after changes to state law, which included a requirement to disseminate a notice of nondiscrimination to all employees, as well as to volunteers, individuals, and entities with regular interaction with students. Further, the U.S. Department of Education has proposed additional amendments to the federal regulations and anticipates finalizing the new regulations later in 2023.

Regardless of changes to law and regulations, the campuses did not find that any of the cases we reviewed that included allegations occurring after August 2020 met the threshold for a sexual harassment investigation under federal regulations. Therefore, none of the cases we reviewed involved the federally mandated hearing process. In addition, some past CSU policies and training incorporated or mentioned aspects of the now-rescinded federal policy guidance that was in place prior to the 2020 amendments to regulations. Even so, the criteria that appeared to most directly govern how campuses determined whether alleged conduct constituted sexual harassment in the cases we reviewed was CSU's policy definition of *sexual harassment*. For that reason, we focus throughout this report on CSU's definition of *sexual harassment* and the accompanying procedures in its policy.

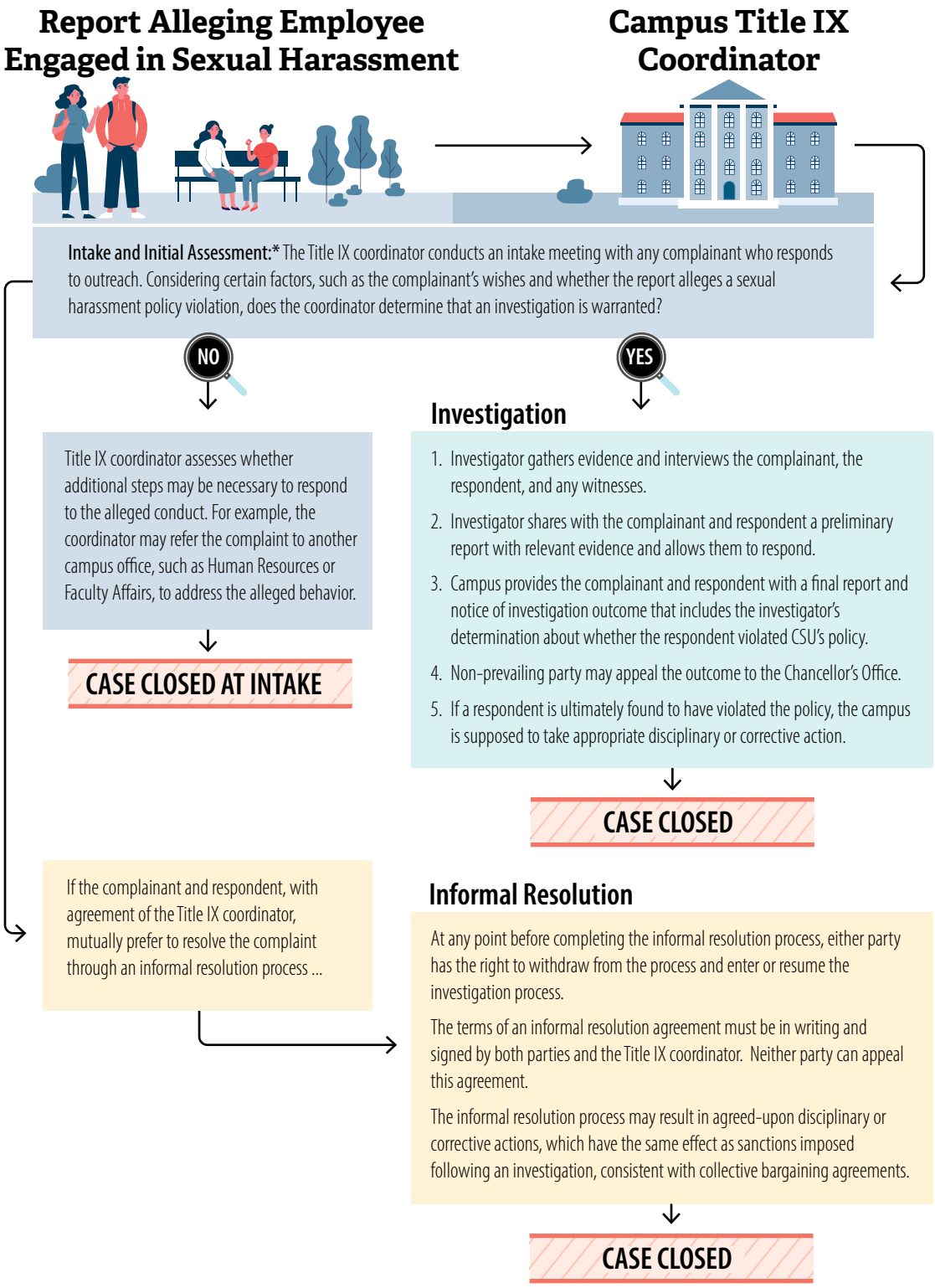
CSU's Sexual Harassment Policy Outlines the Actions Campuses Must Take in Response to Allegations

Under CSU's policy, campuses must take certain actions to respond to each report of sexual harassment. Figure 3 explains the key parts of this process for reports against employees, which was the focus of our audit. The policy defines two key parties to each report of sexual harassment: a person who reported or experienced the alleged conduct (complainant) and a person who allegedly perpetrated the conduct (respondent). The policy also outlines several critical responsibilities of the campus Title IX coordinator, who generally oversees the campus's response to reports of sexual harassment. For example, CSU's policy requires the campus Title IX coordinator to provide outreach and other written notices to the complainant and respondent. When the campus conducts an investigation, the coordinator must also either serve as the investigator or must supervise and oversee investigations that other campus investigators or external investigators conduct, to ensure that those investigations comply with the policy.

CSU's policy states that employees found to have violated the policy will be subject to appropriate discipline, and it lists a range of possible sanctions for a policy violation, including verbal counseling, remedial training, suspension, and termination of employment. Outside of CSU's policy, state law and collective bargaining agreements generally use the term *disciplinary action* to mean suspension, demotion, or termination. Therefore, we use the terms *discipline* or *disciplinary action* for those actions, and we use the term *corrective action* in this report to mean any effort other than discipline to correct alleged behavior. Corrective action can occur in cases with or without a policy violation finding and can include remedies such as counseling, training, or a written letter of reprimand. The policy also allows campuses to take corrective action when they choose not to formally investigate allegations. For example, if the Title IX coordinator decides not to investigate a complaint because the complaint fails to allege a violation of CSU's sexual harassment policy, the policy requires the coordinator to refer the complaint to another campus office if appropriate. The coordinator may refer a case, for instance, to an administrator in human resources, in faculty affairs, or in a similar office (personnel administrator) to address alleged misconduct. We found that the campuses provided corrective action in several cases that did not involve an investigation or a violation of the sexual harassment policy.

For cases that involve investigations, the non-prevailing party may appeal the outcome of the investigation to the Chancellor's Office. That office may uphold the investigation outcome, remand the investigation back to the campus to make changes to the investigation if the Chancellor's Office identifies certain problems, or reverse the investigation outcome. When an investigation results in discipline, the respondent may also be entitled to appeal the discipline as authorized by law or by the relevant collective bargaining agreement.

Figure 3
Campuses Can Address Reports of Sexual Harassment Formally or Informally


Report Alleging Employee Engaged in Sexual Harassment
Campus Title IX Coordinator
Intake and Initial Assessment:* The Title IX coordinator conducts an intake meeting with any complainant who responds to outreach. Considering certain factors, such as the complainant's wishes and whether the report alleges a sexual harassment policy violation, does the coordinator determine that an investigation is warranted?
NO
YES
Title IX coordinator assesses whether additional steps may be necessary to respond to the alleged conduct. For example, the coordinator may refer the complaint to another campus office, such as Human Resources or Faculty Affairs, to address the alleged behavior.
CASE CLOSED AT INTAKE
Investigation
1. Investigator gathers evidence and interviews the complainant, the respondent, and any witnesses.
2. Investigator shares with the complainant and respondent a preliminary report with relevant evidence and allows them to respond.
3. Campus provides the complainant and respondent with a final report and notice of investigation outcome that includes the investigator's determination about whether the respondent violated CSU's policy.
4. Non-prevailing party may appeal the outcome to the Chancellor's Office.
5. If a respondent is ultimately found to have violated the policy, the campus is supposed to take appropriate disciplinary or corrective action.
CASE CLOSED
If the complainant and respondent, with agreement of the Title IX coordinator, mutually prefer to resolve the complaint through an informal resolution process ...
Informal Resolution
At any point before completing the informal resolution process, either party has the right to withdraw from the process and enter or resume the investigation process.
The terms of an informal resolution agreement must be in writing and signed by both parties and the Title IX coordinator. Neither party can appeal this agreement.
The informal resolution process may result in agreed-upon disciplinary or corrective actions, which have the same effect as sanctions imposed following an investigation, consistent with collective bargaining agreements.
CASE CLOSED

Source: CSU's sexual harassment policy.

* The Title IX coordinator must also decide whether alleged conduct meets the threshold for a sexual harassment investigation under federal regulations, in which case different procedures apply. We have depicted the procedures used when reports do not meet the federal threshold.

CSU Employees Have Recently Been at the Center of Several High-Profile Cases of Sexual Harassment

Several high-profile cases of sexual harassment in the CSU system have emerged in recent years. For example, San José State University (San José State) has faced lawsuits and a U.S. Department of Justice investigation related to its handling of reports of sexual harassment against a former athletics trainer. The U.S. Department of Justice investigation resulted in a resolution agreement with San José State in September 2021 that outlines various requirements, including that the campus must track and maintain all reports of sexual harassment in a standardized manner and provide several training sessions to students and employees.

In addition, the former CSU chancellor resigned his position in February 2022 after a media report claimed that while he was the campus president at California State University, Fresno (Fresno State), he mishandled reports of sexual harassment against a high-level administrator. The media report stated that the former chancellor had reached a settlement agreement with the accused administrator that paid the administrator and promised him a letter of reference in exchange for his leaving Fresno State.

The Chancellor's Office has taken a number of actions in response to these incidents. It enacted policies that limit the circumstances in which executive and management employees who have engaged in misconduct can exercise retreat rights—the option to return to a faculty position after leaving an administrator position—or receive positive letters of recommendation. It also engaged an external investigator to conduct a review of the incidents specific to Fresno State. Completed in September 2022, the investigator's report concluded that Fresno State could have taken further action to address earlier allegations of sexual harassment against the administrator in question. The report highlighted the inadequacy of the actions that the former campus president took to address these allegations as a notable factor that negatively affected the campus's response. Finally, the Chancellor's Office also sought the services of a different external firm to conduct a systemwide assessment of CSU's Title IX practices, and that firm presented its findings publicly at a CSU Board of Trustees' meeting in May 2023, and will be followed by the publication of its written findings in July 2023.

The Joint Legislative Audit Committee (Audit Committee) specifically requested that this audit assess CSU's handling of sexual harassment complaints against employees at the Chancellor's Office, San José State, Fresno State, and Sonoma State University (Sonoma State). As part of this audit, we reviewed a total of 40 cases of alleged sexual harassment from 2016 through 2022.

Chapter 1

THE CHANCELLOR'S OFFICE HAS NOT ENSURED THAT CAMPUSES ADEQUATELY AND CONSISTENTLY INVESTIGATE ALLEGATIONS OF SEXUAL HARASSMENT

Chapter Summary

To assess campuses' responses to reports of sexual harassment, we reviewed a total of 40 cases from 2016 through 2022 that involved allegations that CSU employees had engaged in possible sexual harassment.[4] As Table 1 on page 3 shows, the cases that we reviewed included 21 that resulted in a formal investigation, 15 that campuses closed following the intake and initial assessment process (closed at intake), and four that the campuses addressed through an informal resolution agreement. Throughout this report, including in our figures, we have withheld certain egregious or identifying details when describing conduct to protect the privacy of those involved.

We found that campuses lacked clear rationales for closing 11 of the 15 cases at intake, causing us to question whether they should have investigated the allegations. In another seven cases, campuses conducted investigations in which we identified deficiencies that raised concerns about the reasonableness of their determinations that sexual harassment had not occurred. Further, more than half of the 40 case files we reviewed were missing important documentation, and nearly two-thirds of the 21 investigations we reviewed exceeded CSU's established time frames for completion.

A lack of adequate systemwide guidance and oversight contributed to the deficiencies we found in campuses' handling of sexual harassment allegations. Although CSU's current sexual harassment policy generally aligns with relevant requirements in federal and state law, it lacks specificity in certain critical areas, allowing for some of the deficiencies and inconsistencies we observed at the campuses. Officials in the Chancellor's Office expressed some hesitancy to create more prescriptive and potentially more burdensome requirements for campuses. However, clearer and more comprehensive guidelines are necessary to ensure that campuses systemwide handle reports of sexual harassment in an appropriate and consistent manner. State law has established the Chancellor's Office's responsibility to provide systemwide oversight; when it does not do so, it risks perpetuating the types of deficiencies we found in our review.

[4] As we explain in the Introduction, the criteria that appeared to most directly govern how campuses determined whether alleged conduct constituted sexual harassment in the cases we reviewed was CSU's policy definition of *sexual harassment*, rather than the definition in federal regulations. For that reason, we focus throughout this report on CSU's definition of *sexual harassment* and the accompanying procedures in its policy.

In the Absence of Detailed Guidelines, Campuses May Have Inappropriately Closed Some Cases Without Investigating Them

Deciding whether to conduct a formal investigation is one of the most critical steps in a campus's process for responding to sexual harassment allegations. Nonetheless, CSU's sexual harassment policy lacks details about how to make and document these determinations. In the absence of such detailed guidelines, campuses did not consistently provide clear rationales for closing cases at intake rather than performing investigations. Moreover, campuses did not reach out to all possible complainants in some of the cases we reviewed and may have prematurely concluded that behavior did not constitute sexual harassment in others.

Campuses Did Not Document Clear Rationales for Closing 11 Cases Without Investigating Them

Following a report of sexual harassment, CSU policy requires the campus Title IX coordinator to conduct an initial assessment of the allegations and determine whether they warrant an investigation. This initial assessment includes an intake meeting with the complainant to provide him or her with information and discuss options for moving forward. After the intake meeting, the Title IX coordinator must make a written determination—generally within 10 working days—on whether to open an investigation. However, CSU's policy does not require that coordinators document detailed rationales for these determinations, as Figure 4 shows. Consequently, in 11 cases we reviewed—which we detail in Table 2—the campuses did not document clear justification for deciding to close the cases at intake, even though those cases involved allegations that may have warranted investigation.

Although closing cases at intake is sometimes appropriate, campuses should document clear and understandable reasons for doing so. The U.S. Department of Justice required as part of its 2021 resolution agreement with San José State that the campus develop a consistent method to document its reason for declining to investigate reports of sexual harassment. In fact, even in instances when complainants request that a campus not investigate, CSU's own policy requires that the campus consider several factors before acceding.

Deciding not to conduct a formal investigation can have a significant impact on a campus's response to alleged sexual harassment: opening an investigation is CSU's established process for determining whether an employee has violated its sexual harassment policy and if discipline or corrective action is warranted. In fact, CSU's policy specifically states that employees found to have violated the policy will be subject to discipline. However, its requirements for complaints that are not formally investigated are less specific: they include steps such as referring the complaint to another campus office if appropriate. Because conducting an investigation is a necessary prerequisite for determining whether a respondent has violated CSU's sexual harassment policy, we were concerned that the campuses did not document clear rationales for deciding to close the 11 cases at intake rather than conducting investigations.

Figure 4
CSU's Policy Does Not Require Campuses to Document Detailed Rationales for Their Decisions on Whether to Conduct Investigations

POLICY REQUIREMENT #1 - General

The campus Title IX coordinator must document in writing a determination about whether to open an investigation. An investigation may not be warranted if the reported information is insufficient.

No requirements specific to documenting the rationale for this determination.

POLICY REQUIREMENT #2 - If a report fails to allege a policy violation*

The coordinator must notify the complainant in writing that the report will not be investigated without further information. The coordinator must retain a record of the written determination.

No requirements specific to documenting the rationale for this determination.

POLICY REQUIREMENT #3 - If the complainant requests no investigation

The coordinator must balance this request against the campus's duty to provide a safe and nondiscriminatory environment for its community. Relevant factors include whether:

- There are multiple or prior reports of misconduct against the respondent.
- The respondent poses an imminent threat to the campus community.
- There is a power imbalance between the complainant and the respondent.
- The complainant reasonably believes that he or she will be less safe if an investigation is conducted.
- The Title IX coordinator anticipates that it will be possible to conduct a thorough investigation without the complainant's cooperation.

If the complainant is an employee, the campus must also consider its obligation to maintain a safe work environment in determining whether an investigation is necessary.

No requirements for documenting consideration of these factors.

POLICY REQUIREMENT #4 - If a student complainant chooses not to participate from the outset

The coordinator must evaluate whether it will be possible to move forward without the complainant's participation, including whether the non-participation will impact the campus's ability to conduct a meaningful investigation. The coordinator must document the basis for the decision to initiate or to not initiate the investigation.

No guidelines specific to employee complainants or to cases in which any complainant's desire or ability to participate is ambiguous.

Source: CSU's sexual harassment policy.

* The policy also states, more generally and in a different area of the policy, that its procedures are only used to address conduct that may violate it, and alleged misconduct that does not fall under the policy should be directed to the appropriate personnel administrator.

Table 2
We Identified Concerns With 11 of the 15 Cases That Campuses Closed at Intake

		OVERALL CONCERNS	SPECIFIC ISSUES WE IDENTIFIED*			
CASE	RESOLUTION TYPE	CASE MAY HAVE WARRANTED INVESTIGATION, AND CAMPUS DID NOT PROVIDE CLEAR RATIONALE FOR CLOSURE	DID NOT FULLY EXPLAIN THE BASIS FOR ITS DETERMINATION	INCLUDED CHALLENGES WITH OR UNCERTAINTY ABOUT ONE OR MORE COMPLAINANTS' PARTICIPATION	DID NOT DOCUMENT EFFORTS TO IDENTIFY OR CONTACT ONE OR MORE POTENTIAL COMPLAINANTS	MAY HAVE PREMATURELY CONCLUDED THAT ALLEGED CONDUCT DID NOT CONSTITUTE A POLICY VIOLATION
Campus A						
Case #2	Closed At Intake	X	X	X		
Case #3	Closed At Intake					
Case #5	Closed At Intake	X	X	X		
Case #6	Closed At Intake					
Campus B						
Case #1	Closed At Intake	X	X	X	X	X
Case #3	Closed At Intake	X	X	X	X	
Case #5	Closed At Intake	X	X	X		
Case #7	Closed At Intake	X	X	X		X
Campus C						
Case #1	Closed At Intake	X				X
Case #2	Closed At Intake	X			X	X
Case #3	Closed At Intake	X	X			X
Case #5	Closed At Intake	X			X	X
Case #10	Closed At Intake	X	X		X	X
Campus D						
Case #2	Closed At Intake					
Case #5	Closed At Intake					
Total (out of 15 cases)		**11**	**8**	**6**	**5**	**7**

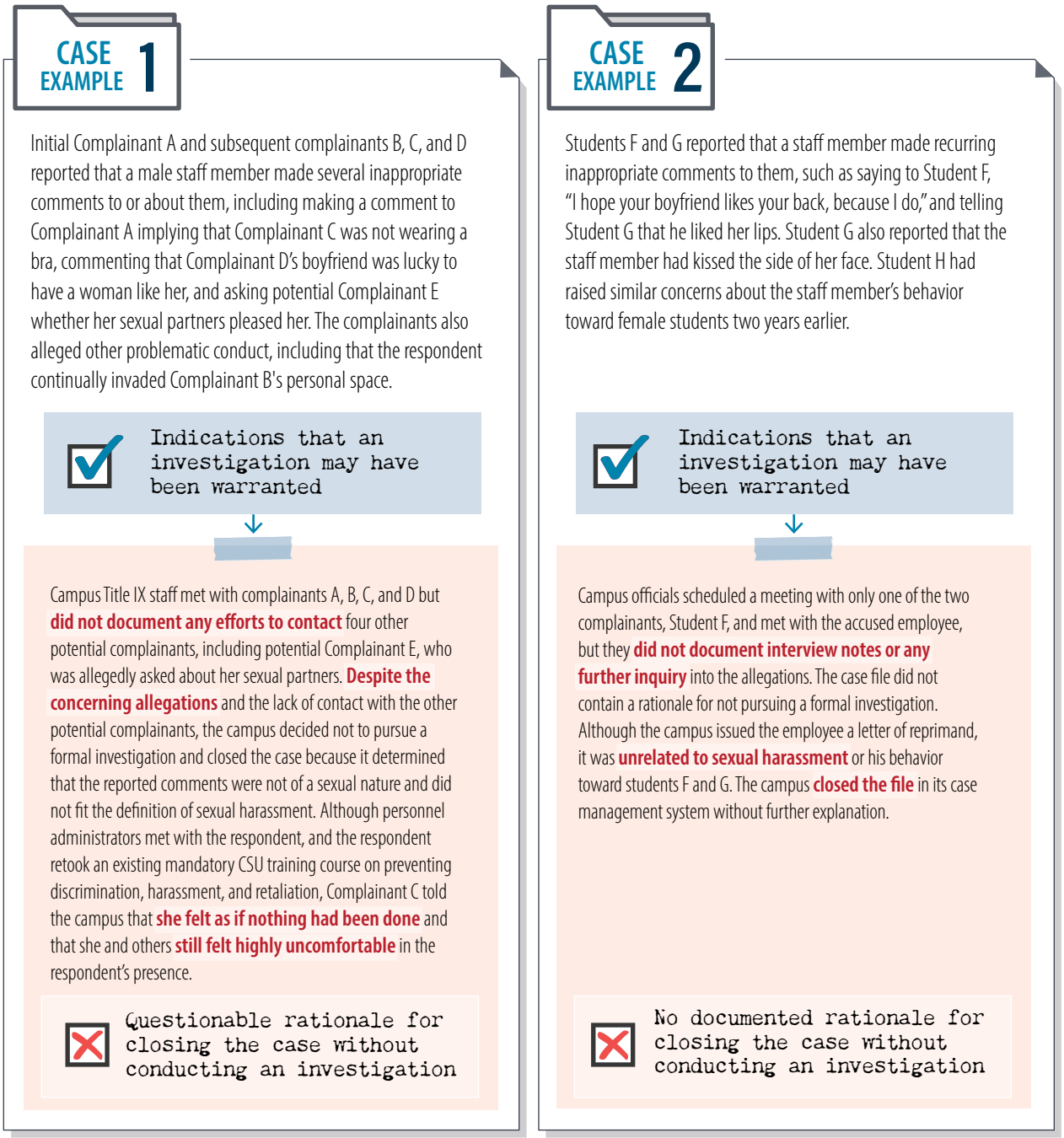
Source: Campus sexual harassment case files.

* We present these specific issues only for the 11 cases for which we identified overall concerns about their closure.

Figure 5 describes two such cases we reviewed. In Example 2, emails between campus officials and a complainant indicate that a Title IX representative scheduled a meeting with the complainant, but the campus did not document any details about that meeting or about its assessment of whether an investigation was warranted. Based on the information contained in the respondent's personnel file, we determined that the campus met with the respondent and issued him a letter of reprimand. However, that letter was specific to behavior unrelated to the sexual harassment allegations; it focused instead on, for example, his disrespectful conduct toward the campus officials who met with him to discuss his alleged misconduct. In response to our questions, the campus's current Title IX coordinator, who did not hold that position at the time of the case, provided new statements from those campus officials indicating that they had discussed with the respondent his inappropriate behavior toward female students. Nonetheless, the current coordinator said that the campus had no further information to provide about why it had not investigated the allegations. The campus's

lack of justification for closing this case is especially concerning given that two different complainants reported misconduct by the respondent that year and a third complainant had reported misconduct two years earlier.

Figure 5
Campuses Sometimes Lacked Clear Rationales for Closing Cases Without Conducting Investigations


CASE EXAMPLE 1
Initial Complainant A and subsequent complainants B, C, and D reported that a male staff member made several inappropriate comments to or about them, including making a comment to Complainant A implying that Complainant C was not wearing a bra, commenting that Complainant D's boyfriend was lucky to have a woman like her, and asking potential Complainant E whether her sexual partners pleased her. The complainants also alleged other problematic conduct, including that the respondent continually invaded Complainant B's personal space.
Indications that an investigation may have been warranted
Campus Title IX staff met with complainants A, B, C, and D but did not document any efforts to contact four other potential complainants, including potential Complainant E, who was allegedly asked about her sexual partners. Despite the concerning allegations and the lack of contact with the other potential complainants, the campus decided not to pursue a formal investigation and closed the case because it determined that the reported comments were not of a sexual nature and did not fit the definition of sexual harassment. Although personnel administrators met with the respondent, and the respondent retook an existing mandatory CSU training course on preventing discrimination, harassment, and retaliation, Complainant C told the campus that she felt as if nothing had been done and that she and others still felt highly uncomfortable in the respondent's presence.
Questionable rationale for closing the case without conducting an investigation
CASE EXAMPLE 2
Students F and G reported that a staff member made recurring inappropriate comments to them, such as saying to Student F, "I hope your boyfriend likes your back, because I do," and telling Student G that he liked her lips. Student G also reported that the staff member had kissed the side of her face. Student H had raised similar concerns about the staff member's behavior toward female students two years earlier.
Indications that an investigation may have been warranted
Campus officials scheduled a meeting with only one of the two complainants, Student F, and met with the accused employee, but they did not document interview notes or any further inquiry into the allegations. The case file did not contain a rationale for not pursuing a formal investigation. Although the campus issued the employee a letter of reprimand, it was unrelated to sexual harassment or his behavior toward students F and G. The campus closed the file in its case management system without further explanation.
No documented rationale for closing the case without conducting an investigation

Source: Campus sexual harassment case files.

Campuses Did Not Consistently Reach Out to All Possible Complainants Before Closing Cases

Challenges with or uncertainty about complainants' participation in the process was likely a factor in campuses' not providing clear rationales for closing six cases at intake. For example, one student complainant, who indicated that she would be graduating the following month, participated in an initial meeting with a Title IX representative in the month of April before postponing a second meeting in May because of scheduling concerns associated with the end of the semester. The Title IX representative and the complainant had agreed in the initial meeting that the representative would not decide about next steps until the complainant indicated how she wanted to proceed. When a different Title IX staff member attempted to follow up with the complainant in August of that same year, the complainant had apparently already graduated. Title IX staff noted in the case file that the complainant was no longer a student and, in August, referred the case to a personnel administrator for potential corrective action. According to the administrator, that referral resulted in a conversation with the respondent in February of the following year and documentation of the concerns in the respondent's annual evaluation.

Of particular note, the case file did not explain how the campus had weighed factors other than the complainant's lack of participation in its decision not to pursue an investigation. The campus's Title IX coordinator reiterated that the campus had provided the complainant with her options and that the complainant had requested more time to consider them and had not requested an investigation. The coordinator also said that respecting complainants' wishes is part of building trust with the campus community and that decisions about whether to conduct investigations must include a consideration of the complainants' wishes and participation. Nevertheless, CSU's policy grants the Title IX coordinator discretion to initiate an investigation even when a student complainant chooses not to participate in the process from the outset, and it requires that the coordinator document the basis for the decision to initiate or not initiate the investigation. Further, in this particular case, the complainant appeared to be participating at the outset and had said in the initial meeting that her primary goal was to put a stop to the respondent's behavior for future students, yet the campus did not document considering whether it could achieve this goal through an investigation.

Moreover, campuses did not document efforts in five cases to identify or contact potential complainants who might have provided important information. In fact, in the case we describe in the previous paragraph, the complainant told the campus Title IX representative that other students were interested in reporting similar misconduct and asked where to direct them. The representative suggested that any interested students attend a follow-up meeting along with the complainant. However, the campus did not document in the case file any attempts to learn the names of these students, even after the complainant postponed the follow-up meeting. Similarly, in Example 1 in Figure 5, a campus documented a rationale for closing the case at intake; however, the rationale was problematic in part because it concluded that the allegations were not sexual in nature even though the campus did not document any efforts to contact a potential complainant who allegedly experienced comments of a sexual nature. Although the Title IX coordinator told us that the campus had attempted to reach this individual by phone but was unsuccessful, the case file did not reference any such attempts.

Campus Title IX coordinators told us that obtaining information from individuals while protecting the identity of a complainant or respondent can be challenging. Further, CSU's policy requires the coordinators to reach out to "the possible complainant named in the report" of potential sexual harassment, but the policy does not specify what "named" means or what campuses should do if they learn about additional potential complainants after an original report, such as during an intake meeting. As a result, the policy does not provide clear direction for how to handle situations in which a campus is aware that there may be complainants with useful information but has not received their names or contact information. For example, we saw case files indicating that complainants had referred generally to other potential complainants without providing the campuses with their names or contact information. Nevertheless, CSU's policy clearly indicates that complainants' participation can affect the quality of a sexual harassment investigation; documenting attempts to identify and contact any potential complainant—or reasons for not doing so—would help demonstrate that campuses had performed their due diligence. Campuses' documented rationales for conducting or not conducting an investigation should also demonstrate that they considered the risk of closing a case prematurely when an investigation could provide critical additional context.

In Seven Cases, Campuses May Have Prematurely Concluded That Alleged Behavior Did Not Constitute Sexual Harassment

We also have concerns about seven cases in which campuses either stated directly or implied that they would not conduct investigations because the alleged behavior, even if true, would not violate CSU's sexual harassment policy. For example, one student alleged that, among other conduct, a faculty member made inappropriate comments about her body and attractiveness, consistently walked her toward her residence after class, talked about his personal and romantic life, and compared her to women he had dated. The complainant submitted a detailed written report of the allegations, met with a campus Title IX representative, and stated that she wanted action taken to address the behavior. The alleged conduct, if true, appeared to us to have a reasonable chance of meeting CSU's policy definitions of sexual harassment and possibly even stalking. However, the Title IX representative explained to the complainant that "Title IX has a limited purview" and that the reported allegations were "on the border" of that purview. The representative referred the case to the relevant academic department to address the behavior, although the campus could not provide evidence that the academic department followed up or took any corrective action.

Similarly, in Example 1 in Figure 5—which we previously discuss because the campus did not document its efforts to contact potential complainants—the campus determined during its initial assessment that the allegations did not constitute sexual harassment. Specifically, a complainant alleged that, among other conduct, a supervising employee made a comment implying that a female student was not wearing a bra. A second individual reported that the same respondent continually invaded her personal space, looked at her exposed leg when she was working, and engaged in similar behavior that ultimately caused her to quit her job. Further, the respondent allegedly asked a third individual if her sexual partners pleased her. In total, the initial complainant's report included at least four specific incidents of problematic behavior, and three additional individuals indicated to the campus that the respondent's behavior had made

them uncomfortable. The initial complainant feared that the respondent would continue harassing students and stated that if termination was necessary to keep the respondent away from students, then the complainant was looking for that outcome.

Despite those allegations, a campus Title IX representative wrote in a formal memorandum to a personnel administrator that the campus had determined that the incidents did not meet the threshold for a formal investigation under CSU's policy. The memorandum stated that the allegations, while concerning and potentially unprofessional, "[did] not have the specificity to conclude that they are of a sexual nature" and did not fit the definition of *sexual harassment*. As a result, the campus did not take formal action under CSU's sexual harassment policy. Instead, personnel administrators met with the respondent to discuss the allegations, and the respondent retook an existing mandatory CSU training course on preventing discrimination, harassment, and retaliation. One of the complainants subsequently stated in an email to the campus that she felt as if nothing had been done and that she and others still felt highly uncomfortable in the respondent's presence.

Although it is reasonable to close cases at intake when the allegations, even if true, could not possibly constitute sexual harassment, CSU's policy should give the benefit of the doubt to more nuanced or borderline allegations that investigations may ultimately substantiate as sexual harassment. Currently, CSU's policy specifies that campuses should not investigate a report that "fails to allege a violation" of the policy, as we show in Figure 4 on page 15. However, relying solely on the results of an initial assessment to determine whether alleged conduct violates the policy can be risky, because an initial assessment does not involve the same rigor as an investigation. An initial assessment is a preliminary inquiry into the allegations to determine whether they warrant an investigation, whereas an investigation involves taking reasonable steps to gather all relevant evidence, sharing a preliminary report of that evidence with the complainant and respondent, and producing a final investigation report with a determination that is subject to appeal.

By stating that CSU should give the benefit of the doubt to nuanced or borderline allegations when deciding whether to conduct an investigation, we are not recommending that campuses investigate all allegations of sexual harassment. For example, as we explain earlier in this section and depict in Figure 4 on page 15, campuses should also consider factors other than the nature of the allegations, such as the complainant's wishes, in deciding whether to conduct an investigation. However, the Chancellor's Office should ensure that campuses do not prematurely dismiss allegations that could be found to violate its sexual harassment policy, given the risks involved with making those determinations using limited information.

By Standardizing the Initial Assessment Process, the Chancellor's Office Could Better Ensure That Campuses Do Not Inappropriately Close Cases at Intake

San José State recently developed its own guidance materials to standardize its initial assessments of allegations. The guidance includes detailed protocols for performing and documenting the initial assessment process. It also includes a form for evaluating

whether to initiate an investigation, with areas to document whether there have been other reports of misconduct involving the respondent and to assess the risk posed by not proceeding with an investigation.

The Chancellor's Office could establish this best practice systemwide by creating more detailed guidelines for campuses, such as those in the text box, and by creating a form similar to San José State's that campuses could use to document their initial assessments. These changes could not only improve campuses' responses to sexual harassment allegations but also streamline and clarify CSU's requirements, making it easier for campuses to conduct initial assessments. As we show in Appendix A, campuses systemwide reported closing about 80 percent of relevant cases without conducting an investigation.[5] Although many of these closures may be appropriate, the Chancellor's Office should take the steps necessary to ensure that campuses are adequately documenting their initial assessments and conducting investigations when they are warranted. When campuses do not take sufficient action to address sexual harassment allegations, they put students, employees, and their own reputations at risk.

The Chancellor's Office Should Improve Its Guidelines for Conducting Initial Assessments of Allegations

Although CSU's policy includes certain requirements for campuses' initial assessments of sexual harassment allegations, it lacks comprehensive guidelines requiring campuses to do the following:

- Determine whether the respondent has been the subject of multiple or prior allegations.
- Consider the benefits and risks of conducting or not conducting an investigation when there are challenges with or ambiguities about a complainant's desire or ability to participate.
- Demonstrate efforts to identify or contact any potential complainants, and assess whether an investigation could reveal new allegations, context, or information.
- Assume, for the purpose of deciding whether to conduct an investigation, that the report alleges sexual harassment under CSU's policy unless there are clear indications to the contrary.
- Document a detailed rationale in the case file, including the elements above as applicable, for each determination of whether to conduct an investigation.

Source: CSU's sexual harassment policy.

Significant Deficiencies in Seven Investigations Raise Concerns About Those Investigations' Outcomes

CSU's sexual harassment policy requires campuses to use the investigation process described in Figure 3 on page 11 to determine whether sexual harassment has occurred. Under the policy, each investigation should result in a report that summarizes relevant evidence, analyzes that evidence using the *preponderance of the evidence* standard,[6] and reaches a determination about whether a policy violation occurred (investigation report). The policy requires the campus investigator to share a preliminary investigation report with both the complainant and the respondent, who each have an opportunity to respond, ask questions, and request that the investigator gather additional evidence. It is crucial that a campus supports the final investigation report's determinations with evidence and a clear rationale because these determinations directly influence whether the campus takes disciplinary or corrective action and what that action entails.

5 We have concerns about the reliability of these data, as we explain in Appendix A. Moreover, the campuses' data are not always detailed enough to distinguish between cases that were closed at intake and cases that were addressed through informal resolution agreements. Nevertheless, our more detailed review of cases and data at the four campuses suggests that these campuses close a significant percentage of cases at intake.

6 The *preponderance of the evidence* standard means the greater weight of the evidence. In other words, the standard is met if the campus determines it is more likely than not that the alleged misconduct occurred.

Nonetheless, we identified deficiencies in the quality of investigation reports in seven of the 21 investigations we reviewed, as Table 3 shows. We also reviewed cases in which investigators clearly and comprehensively analyzed relevant evidence to reach well-supported determinations about whether a respondent had violated CSU's sexual harassment policy. However, by providing campuses with additional guidance and implementing new requirements related to the investigative process, the Chancellor's Office could better ensure that campuses consistently perform investigations in a manner that protects students and employees and aligns with the intent of its sexual harassment policy.

Table 3
Deficiencies Caused Us to Question the Outcomes of Seven of the 21 Investigations We Reviewed

CASE	RESOLUTION TYPE	INVESTIGATIVE DETERMINATION ABOUT SEXUAL HARASSMENT	CONTAINED DEFICIENCIES THAT CAUSED US TO QUESTION THE INVESTIGATIVE DETERMINATION ABOUT SEXUAL HARASSMENT
Campus A			
Case #1	Investigation	Not Substantiated	X
Case #7	Investigation	Substantiated	
Case #8	Investigation	Substantiated	
Case #9	Investigation	Substantiated	
Case #10	Investigation	Substantiated	
Case #11	Investigation	Substantiated	
Campus B			
Case #2	Investigation	Not Substantiated	
Case #4	Investigation	Not Substantiated	X
Case #6	Investigation	Not Substantiated	X
Case #8	Investigation	Not Substantiated†	X
Case #9	Investigation	Substantiated	
Case #11	Investigation	Substantiated	
Case #12	Investigation	Substantiated	
Campus C			
Case #4	Investigation	Substantiated	
Case #6	Investigation	Substantiated	
Case #7	Investigation	Not Substantiated	X
Case #8	Investigation	Not Substantiated	X
Case #9	Investigation	Substantiated	
Campus D			
Case #1	Investigation	Not Substantiated	X
Case #6	Investigation	Not Substantiated	
Case #7	Investigation	Not Substantiated	
Total (out of 21 cases)			**7**

Source: Campus sexual harassment case files.

* We list deficiencies only for the cases in which we had concerns about the campus's ultimate determination about sexual harassment.

† Campus B Case #8 was not substantiated because the Chancellor's Office reversed on appeal the campus's finding of sexual harassment.

	KEY DEFICIENCIES WE IDENTIFIED FOR THOSE SEVEN CASES*						
	APPEARED TO USE UNREASONABLY RESTRICTIVE INTERPRETATIONS OF CSU'S SEXUAL HARASSMENT DEFINITION	DID NOT EXPLAIN REASONING FOR WHETHER CONDUCT MET KEY ASPECTS OF CSU'S SEXUAL HARASSMENT DEFINITION	OMITTED AN ALLEGATION FROM FINAL ANALYSIS AND DETERMINATION	PROVIDED DETERMINATIONS FOR EACH ALLEGATION SEPARATELY BUT DID NOT ADDRESS THEIR CUMULATIVE EFFECT	DEFINED OR INTERPRETED ALLEGATIONS NARROWLY, OMITTING CERTAIN EVIDENCE FROM CONSIDERATION	DID NOT APPROPRIATELY WEIGH EVIDENCE TO ESTABLISH WHETHER ALLEGED CONDUCT OCCURRED	DID NOT MAKE REASONABLE ATTEMPTS TO GATHER ALL RELEVANT EVIDENCE
Campus A							
Case #1	X	X	X				
Case #7							
Case #8							
Case #9							
Case #10							
Case #11							
Campus B							
Case #2							
Case #4	X			X	X	X	
Case #6	X		X		X		
Case #8		X	X				
Case #9							
Case #11							
Case #12							
Campus C							
Case #4							
Case #6							
Case #7	X					X	X
Case #8		X	X			X	X
Case #9							
Campus D							
Case #1	X	X					
Case #6							
Case #7							
	5	**4**	**4**	**1**	**2**	**3**	**2**

We Identified Critical Deficiencies in Seven of the Investigation Reports We Reviewed

We Identified Key Deficiencies in Seven Campus Investigation Reports

- Appeared to use unreasonably restrictive interpretations of CSU's definition of *sexual harassment*.
- Did not explain reasoning for whether alleged conduct met key aspects of CSU's definition of *sexual harassment*, such as concluding without a clear rationale that conduct was not sufficiently severe.
- Omitted an allegation from the final analysis and determination.
- Provided determinations for each allegation separately but did not address whether the cumulative effect of the respondent's behavior constituted sexual harassment.
- Defined or interpreted allegations narrowly, omitting certain evidence from consideration.
- Did not appropriately weigh evidence to establish whether alleged conduct occurred, such as dismissing an allegation that multiple witnesses corroborated because the majority of witnesses did not personally experience the alleged conduct or find it problematic. In this instance, the report also did not document an analysis of credibility for any of these witnesses.
- Did not make reasonable attempts to gather all relevant evidence.

Source: Campuses' sexual harassment case files.

The text box describes the key concerns we identified in seven of the 21 investigation reports we reviewed. In particular, the campuses' analyses in these investigations—in which they drew conclusions about the presented evidence—contain deficiencies. For example, one of the most common deficiencies we noted involved investigators using what appear to be unreasonably restrictive interpretations of the definition of *sexual harassment* in CSU policy, particularly when determining whether the conduct met the required threshold for being "sufficiently severe, persistent, or pervasive." Figure 6 details two such examples. When we spoke with campus Title IX coordinators, they generally indicated that analyzing whether alleged conduct meets CSU's definition of *sexual harassment* can be complex and nuanced. In fact, we identified an investigation report not included in Figure 6 that explicitly refers to the investigator's assessment as a "close call."

Although investigators must make these difficult determinations, they lack clear and detailed guidelines from the Chancellor's Office that would help ensure that they do so consistently. Consequently, the investigators in the cases we reviewed used their own interpretations of CSU's policy to draw conclusions—interpretations that were inconsistent and, as the next text box shows, sometimes questionable. In fact, one investigation cited legal decisions, including court cases related to federal and state anti-discrimination laws, to support the determination that a respondent's inappropriate comments did not meet the standard of "severe, persistent, or pervasive" conduct in CSU's policy. However, this investigation was supposed to assess whether conduct violated CSU's policy, not whether it violated state or federal law. Investigators should not be expected to find and analyze court cases to interpret a policy that CSU created; when they do so, it indicates a need for CSU to provide uniform guidance for interpreting its own policy.

We also noted deficiencies related to campuses' efforts to gather and analyze evidence to establish whether alleged conduct had occurred. In one case, the investigator directed the complainant and witnesses to provide responses to a set of written questions, including two specific questions about whether they had experienced or witnessed any inappropriate behavior of a sexual or discriminatory nature from the respondent. The investigator did not conduct any verbal interviews

of these individuals or ask additional, clarifying questions. After the campus determined that the respondent's conduct did not constitute sexual harassment but that certain behavior did constitute harassment based on gender, the respondent appealed the case to the Chancellor's Office. The Chancellor's Office remanded the investigation back to the campus and directed it to conduct in-person interviews with all parties, stating that doing so would allow the campus to ask clarifying questions and assess credibility. However, while the Chancellor's Office had been reviewing the appeal, the respondent's contract with the campus had ended and he had left the campus, which never documented its revised investigation or any final determinations in the case file. The campus potentially could have avoided the Chancellor's Office's remanding the investigation if it had gathered and analyzed sufficient evidence as part of its initial efforts.

In response to our concerns about investigation reports, CSU systemwide officials mentioned existing training and guidance from the Chancellor's Office that help address these issues. Federal regulations and CSU policy require campus Title IX coordinators and other key staff to undergo training, including training on investigating sexual harassment allegations, although the requirements do not specify a minimum number of hours of training. One option for these staff is to attend an annual conference that CSU systemwide officials organize. The conference in August 2022 included a session on interviewing complainants, respondents, and witnesses, as well as a session on investigation report writing. CSU's assistant vice chancellor and chief counsel for civil rights also provided us with examples of training materials from prior years that contained detailed, helpful information relevant to our concerns.

However, the Chancellor's Office has not explicitly required campus Title IX coordinators or staff to attend this training or to use the associated materials. The sexual harassment policy and its attachments remain the primary resource that investigators must use to ensure that they have met CSU's expectations for each investigation report. Although the existing forms of systemwide training and guidance are important for addressing the concerns we identified, they should be paired with stronger written guidelines for campuses, as we discuss in the sections that follow.

Without Systemwide Guidelines, Campuses Sometimes Used Questionable Interpretations of CSU's Policy

Examples of components of CSU's *sexual harassment* definition that investigators interpreted in questionable ways:

Conduct is unwelcome.

- Example interpretation from an investigation report: Respondent in a position of authority calling volunteer "cute" in a text message was not unwelcome because the messages before the comment suggested they had a "casual relationship," even though interview notes from the case file implied that the volunteer did not welcome the respondent's conduct.

Conduct is of a sexual nature.

- Example interpretation from an investigation report: Faculty respondent asking a student-worker complainant to attend an event with him—allegedly as his "date," and after talking with the complainant about his break-up—was not sexual in nature.

Conduct is sufficiently severe, persistent, or pervasive.

- Example interpretations from investigation reports:
  - Conduct did not meet this threshold because it consisted of isolated incidents. The reports did not explain whether the conduct was sufficiently severe.
  - Conduct did not meet this threshold because it did not escalate over time.
  - Conduct did not meet this threshold because complainant was able to continue working and avoid respondent.

Source: CSU's sexual harassment policy and campus sexual harassment case files.

Figure 6
Investigative Deficiencies Led Us to Question Campuses' Determinations That Some Employees Had Not Violated CSU's Sexual Harassment Policy

CASE EXAMPLE 3

Allegations:

A vendor/contractor reported that a supervising faculty member made inappropriate comments to her on multiple occasions, including comments about her clothing and appearance, and hugged her when she attempted to shake his hand during their first meeting. The faculty member also allegedly touched the complainant's hair and kissed a different staff member without obtaining consent, among other allegations.

Investigative Determination:

The campus investigator substantiated each of the six allegations they analyzed, including the respondent's making inappropriate comments, touching the complainant's hair, and kissing a staff member. However, the investigator **found that the conduct did not meet the threshold for sexual harassment in CSU's policy, because it was not sufficiently severe, persistent, or pervasive.**

Key Concerns With Analysis and Conclusion:

- **Omitted, for unknown reasons, an additional allegation of inappropriate touching**—despite the complainant and a witness indicating that it had occurred.
- **Interpreted an allegation narrowly** by substantiating only one particular comment and omitting from consideration several other alleged comments about the complainant's clothing and appearance.
- **Appeared to use an unreasonably restrictive interpretation of CSU's definition of sexual harassment.** For example, the campus claimed that the behavior was not sufficiently severe, persistent, or pervasive, because the complainant was able to continue working and avoid the respondent.

CASE EXAMPLE 4

Allegations:

An individual not affiliated with CSU reported that a CSU employee made inappropriate comments to her at a social engagement following a professional event and "touched [her] stomach/hip in an intimate way." The complainant alleged that the respondent said that since they first met, he thought that they "would f**k."

Investigative Determination:

The campus investigator determined that this conduct—both the comment and touching—more likely than not occurred and was of a sexual nature. However, the investigator **found that the conduct did not violate CSU's policy because it was not sufficiently severe or pervasive.**

Key Concerns With Analysis and Conclusion:

- **Did not document a complete rationale** to support the determination, such as an explanation of how the investigator determined that the conduct was not sufficiently severe.
- **Cited CSU's definition of *harassment* but not of *sexual harassment*,** even though the investigation referred to sexual harassment and focused on conduct of a sexual nature.
- **Appeared to use an unreasonably restrictive interpretation of CSU's policy.** For example, the campus implied that isolated incidents could not create an intimidating, hostile, or offensive environment but did not explain or support this idea.

Source: CSU's sexual harassment policy and campus case files.

The Chancellor's Office Could Address Some Investigative Deficiencies by Providing Additional Guidance

The Chancellor's Office could address many of the investigative deficiencies we identified by issuing additional guidance to the campuses. CSU's vice chancellor for human resources explained that sexual harassment is very case-specific and that forming an exact definition of *conduct that constitutes sexual harassment* is challenging, if not impossible. However, she agreed that the Chancellor's Office could create guidance documents to help investigators better and more consistently document their analyses of that conduct. In fact, the Chancellor's Office has already provided some specific guidelines about certain aspects of the policy's *sexual harassment* definition. For instance, the policy itself states that conduct does not need to be motivated by sexual desire to constitute sexual harassment. In addition, CSU's systemwide Title IX webpage provides links to slides from a 2020 training series it conducted that include federal departments' interpretations of "unwelcome" conduct and factors to consider—like the power differential between the complainant and respondent—when assessing whether conduct has created an intimidating, hostile, or offensive environment.

The U.S. Department of Education Office for Civil Rights has created a precedent for providing guidance on identifying sexual harassment: since at least 2001, it has published detailed guidance documents that include factors that schools should consider when determining whether conduct constitutes sexual harassment under federal law, including examples of specific types of conduct or circumstances that could assist school officials in making those determinations. The Chancellor's Office could similarly develop detailed guidelines for how to assess whether conduct meets each component of CSU's sexual harassment definition, and it could offer examples of specific types of conduct or circumstances that could assist campuses in making those assessments. One option would be to provide this guidance as an attachment to its sexual harassment policy—a separate document that is included with the policy and can be incorporated by reference. The Chancellor's Office has used this approach in the past to communicate more detailed guidance or responsibilities. Another option would be to provide the guidance in a document or manual separate from the policy, similar to the manner in which the U.S. Department of Education Office for Civil Rights has issued its guidance. Either way, the Chancellor's Office should communicate that it expects investigators to use the guidance as a resource when conducting investigations and writing investigation reports.

In addition, the Chancellor's Office could mitigate concerns about the campuses' investigative determinations by providing guidance on the format and level of detail necessary in their investigation reports. As the text box describes, CSU's sexual harassment policy lacks guidance about how to structure key parts of these reports. Consequently, we noted wide variations in the clarity and thoroughness of some of the investigative analyses and determinations that we reviewed, including in reports prepared by the same campus. For example, we reviewed an investigation report at one campus that lacked key credibility evaluations and did not consider the cumulative effect of all relevant conduct in its final determination, whereas another report at the same campus included credibility evaluations and offered a well-organized analysis and determination that considered all of the respondent's behavior. By providing guidance on the content of the reports, the Chancellor's Office would not only ensure that the reports are similar in structure and thoroughness but could also take a step toward standardizing the quality of the underlying investigations.

CSU's Policy Requirements for Campus Investigation Reports Lack Specificity

Investigation reports currently must include the following:

- A summary of the allegations.
- A detailed description of the evidence considered.
- Analysis of the evidence, including relevant credibility evaluations, and appropriate findings.

CSU's policy does not explain how to structure and generate those elements, because it does not do the following:

- Specify how to perform and document credibility evaluations.
- Require analysis specific to each allegation that establishes whether the alleged conduct likely occurred and require that these analyses include all relevant conduct for which the investigator has identified evidence.
- Require, for conduct found to have likely occurred, analysis specific to each relevant component of the *sexual harassment* definition in policy.
- Require that the analysis and final determination about whether conduct violated policy explicitly consider the cumulative effect of all relevant conduct found to have likely occurred.

Source: CSU's sexual harassment policy.

Although allowing investigators some flexibility in structuring the final reports is reasonable, the Chancellor's Office should establish minimum guidelines and convey expectations for completing key components of the analysis and determination sections. For example, it could add minimum guidelines to its policy to address some of the points in the text box and provide an attachment to the policy with more detailed guidance. In creating this guidance, it could consider leveraging portions of materials from previous systemwide training sessions for Title IX investigators. Some of these materials include detailed guidance for documenting credibility evaluations and structuring investigative analyses and determinations.

In addition, the variance in the quality of report formats that we saw suggests that the campuses might benefit from the Chancellor's Office providing them with a template for the analysis and determination sections. CSU's assistant vice chancellor and chief counsel for civil rights shared with us an existing report template that addresses some of our concerns. In particular, this template includes sections for analyzing whether conduct meets key components of the *sexual harassment* definition. However, the template is for cases that involve student respondents, not employee respondents. Further, CSU has not yet standardized the template's use by, for instance, attaching it to the sexual harassment policy.

By Standardizing an Internal Review Process, the Chancellor's Office Could Ensure That Campuses Apply Its Policy More Consistently

Another way that the Chancellor's Office can improve campuses' investigations is by requiring that campuses document an internal review—completed by someone other than the primary investigator—of each investigation report. For example, some of our concerns with investigation reports were attributable to the use of incorrect policies or the failure to document reasonable attempts to gather all relevant evidence, rather than to gaps in the sexual harassment policy. A documented internal review process could help ensure that investigators apply CSU policy more consistently and could identify any omissions or concerns.

CSU policy currently requires the campus Title IX coordinator to either serve as the investigator or review and oversee investigations conducted by other investigators; however, the policy does not require the coordinator or another internal reviewer to certify in writing that the report aligns with CSU's policy. CSU's assistant vice chancellor and chief counsel for civil rights indicated that the campus counsel may also review draft investigation reports and provide other guidance upon request by the campus.

In three of the investigations for which we had concerns, the case file contained evidence that the Title IX coordinator had received an investigator's draft or final report, but the file did not document any specific feedback from or approval by the coordinator, such as documentation that the coordinator had determined the report to align with CSU's policy. The other four investigation reports for which we had concerns did contain written feedback from the Title IX coordinator, campus counsel, or another reviewer, such as suggested edits or comments asking for clarification on certain points. However, the documented feedback varied widely in comprehensiveness and did not clearly indicate whether the reviewers approved the final reports. A structured supervisory review and approval of investigation reports could help ensure that campus investigations are consistent, adequate, and thorough.

More Than Half of the Case Files We Reviewed Were Missing Important Documentation

Of the 40 case files we reviewed, 24 were missing important documentation in the case file, making it difficult to assess whether the campuses had handled allegations of sexual harassment appropriately. The missing documentation included required outreach to complainants, notices of timeline extensions, relevant evidence, interview notes, and information about the corrective actions that campuses took. In some of these instances, documentation that was missing from the case files was available outside of those files, such as in campus officials' own records or in employees' personnel files, but in other instances campuses were not able to provide us with key documentation. For example, one case file referenced inappropriate emails that an employee respondent sent, but the campus did not include in the case file or separately provide us with any information about the content of the emails themselves. The absence of such evidence precluded us from determining the specific nature of the alleged conduct and whether the campus took appropriate action.

CSU's sexual harassment policy does not contain specific requirements for the types of documents that campus Title IX coordinators must include in a sexual harassment case file. The U.S. Department of Justice illustrated the importance of such requirements by listing in its 2021 resolution agreement with San José State the specific information that the

campus should design its case management system to capture or maintain for all reports of sexual harassment. The required documents include interview notes, any significant correspondence with complainants or respondents, and all disciplinary actions taken. CSU already includes attachments to its policy that provide detailed information, such as the role and responsibilities of the campus Title IX coordinator and a complaint form template. Therefore, CSU could add an attachment to its sexual harassment policy that requires that campuses maintain case files that meet certain guidelines. These guidelines could include a checklist of specific required documents.

Documenting the outcome of each case is particularly important, because it would help ensure that campuses follow through with implementing corrective actions. As we explain in Chapter 2, campuses sometimes did not implement or document appropriate or timely corrective actions. We also identified two cases in which a campus's lack of accessible documentation about the outcome of a previous case may have affected its handling of a new allegation of sexual harassment against the same respondent. Requiring the Title IX coordinator to document the details of each case's outcome before closing a case file could prompt the coordinator to follow up with campus personnel administrators in such instances.

CSU's assistant vice chancellor and chief counsel for civil rights agreed that case file documentation is important but noted that imposing additional policy requirements on all campuses could add to the Title IX coordinators' already burdensome workload. Moreover, he stated that documenting discipline could be duplicative because it is typically documented elsewhere, such as in a personnel file. Nevertheless, without this documentation in the case file, the Title IX coordinators may not have the necessary information readily available to carry out their responsibility to ensure effective corrective action. In fact, CSU's own policy specifies that the Title IX coordinator is responsible for ensuring that the campus imposes appropriate discipline on employees who have violated CSU policy. We question how the coordinator can do so effectively if the case files do not contain records of the corrective or disciplinary actions taken.

Moreover, the coordinator's sexual harassment case file is the primary source of information about each case and serves as a resource for staff who handle future reports of sexual harassment related to the same complainant or respondent. When developing settlement agreements with respondents, campuses may accede to employees' requests to remove evidence of investigation findings and discipline from their personnel files. Similarly, collective bargaining agreements permit employees to request that campuses remove certain documents, like written reprimands, from their personnel files after a period of time. Thus, the sexual harassment case file should serve as the central repository for information about a case to ensure that campuses are fulfilling their responsibilities under state and federal law.

Nearly Two-Thirds of the Investigations We Reviewed Exceeded the Time Frames in CSU's Sexual Harassment Policy

When campuses do not investigate allegations of sexual harassment in a timely manner, it can prolong what is often a difficult experience for both complainants and respondents. Nonetheless, campuses exceeded the time frames in CSU's sexual harassment policy in 13 of the 21 investigations we reviewed, as Table 4 shows. CSU's sexual harassment

policy through 2021—which was applicable to the majority of cases we reviewed—allowed up to 70 working days for investigations to determine whether alleged conduct occurred and violated the policy, although campuses were permitted to extend that time frame to a maximum of 100 working days, as Figure 7 shows. Campus coordinators generally cited a number of factors that may lengthen the timelines for investigations, such as the unavailability of involved parties, coordination of involved parties with external investigators, and the review-of-evidence process, which allows complainants and respondents the opportunity to review and respond to a preliminary investigation report and request that investigators gather additional evidence. According to CSU's assistant vice chancellor and chief counsel for civil rights, CSU changed its policy in 2022 to remove a specific numeric limit on timeline extensions and instead allow extensions for good cause, to provide flexibility given the challenges inherent in conducting investigations in compliance with policy. As of 2022, CSU's sexual harassment policy allots a maximum of 100 working days for investigations and allows extensions for good cause. The 2022 policy does not specify a limit on the number or length of extensions.

Table 4
Each Campus We Reviewed Took More Than 100 Days to Complete Some Investigations

CASE	NUMBER OF WORKING DAYS ALLOWED IN POLICY	TOTAL NUMBER OF WORKING DAYS TAKEN FOR INVESTIGATION	NUMBER OF WORKING DAYS OVER ALLOWED AMOUNT
Campus A			
Case #1	100	368	268
Case #9	100	131	31
Campus B			
Case #2	100	123	23
Case #4	100	150*	50
Case #6	70†	158	88
Case #8	100	120*	20
Campus C			
Case #4	70†	117	47
Case #6	100	157	57
Case #7	100	241‡	141
Case #8	70†	99	29
Case #9	100	256	156
Campus D			
Case #1	70†	89	19
Case #6	100	117*	17

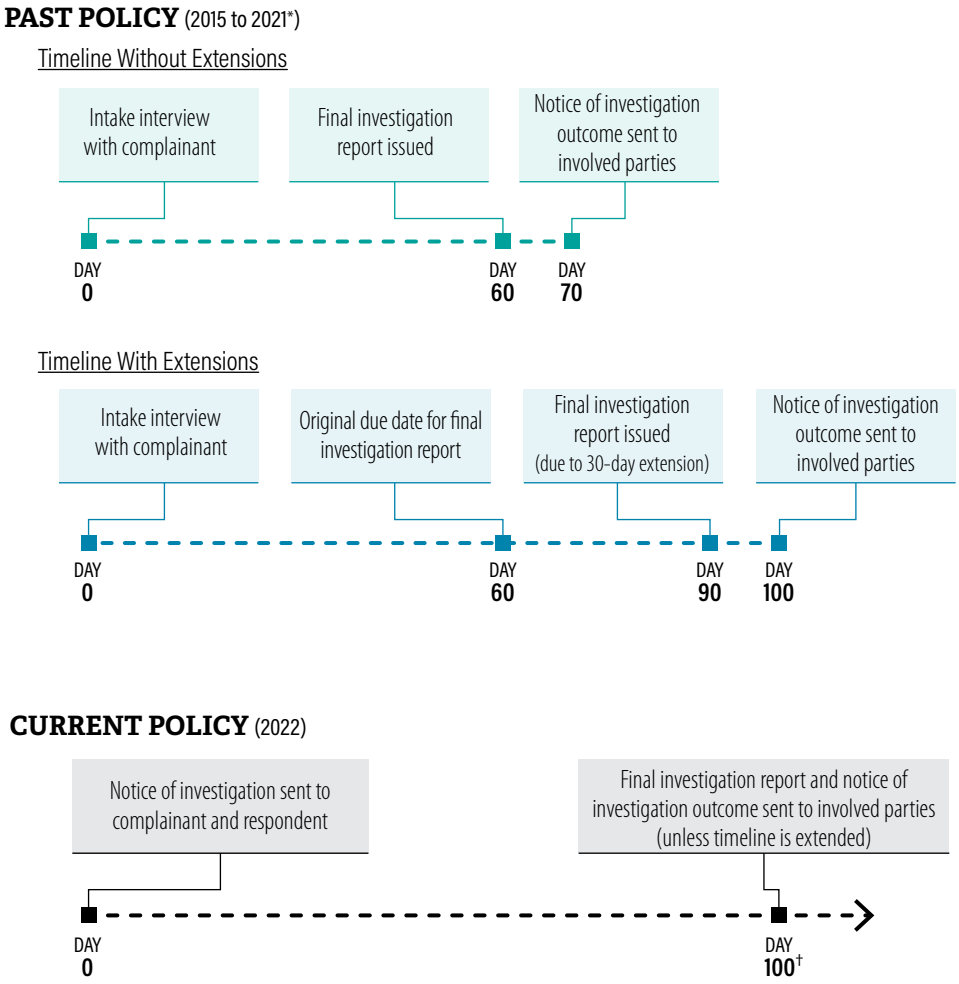
Source: Campus sexual harassment case files.

* The campus did not document the exact start date of the investigation timeline for this investigation. As a result, we used a later date (such as the date of the written complaint or the date that the notice of investigation was sent to involved parties) as a proxy for the start date to calculate the number of working days taken to complete the investigation. Accordingly, we calculate that this investigation took at least the stated number of working days.

† Because we found no evidence of any extensions to this case's investigation timeline, we used the 70-day time frame that CSU allotted at the time of the investigation.

‡ This case initially began using the informal resolution process, but the campus later changed it to an investigation at the complainant's request. The campus used the date that the complainant filed a written complaint as the start date, so we used this date to calculate the number of working days taken to complete the investigation. Accordingly, we calculate that this investigation took at least 241 working days.

Figure 7
During Most of Our Audit Period, Campuses Had 70 to 100 Days to Complete Their Investigations


PAST POLICY (2015 to 2021*)
Timeline Without Extensions
Intake interview with complainant
Final investigation report issued
Notice of investigation outcome sent to involved parties
DAY 0
DAY 60
DAY 70
Timeline With Extensions
Intake interview with complainant
Original due date for final investigation report
Final investigation report issued (due to 30-day extension)
Notice of investigation outcome sent to involved parties
DAY 0
DAY 60
DAY 90
DAY 100
CURRENT POLICY (2022)
Notice of investigation sent to complainant and respondent
Final investigation report and notice of investigation outcome sent to involved parties (unless timeline is extended)
DAY 0
DAY 100†

Source: CSU's sexual harassment policies from 2015 through 2022.

* These timelines may predate 2015. To align with our audit period, we reviewed the relevant policies in effect from 2015 through 2022 and applied them accordingly to the cases we reviewed.

† CSU's current policy permits some investigations to last longer than 100 working days through extensions for good cause.

At times investigations can take significantly longer than 100 days. For example, at one campus, an external investigator conducted an investigation in which case file records included 12 timeline extensions. Although CSU's sexual harassment policy at the time allowed the investigation timeline to be extended up to 30 days from the original due date, this particular investigation took at least 368 working days to complete. At one point, the employee respondent complained to the campus Title IX coordinator about the investigation's length. The student complainant also expressed a desire for the investigation to "be over with." Three of these extensions were the result of the respondent's requests: one for more student witnesses to be interviewed,

and two for more time to review and respond to evidence. However, at least five other extensions were the result of delays by the investigator, who cited reasons such as other work commitments and needing more time to prepare key documents.

The campus Title IX coordinator explained that when the campus uses an external investigator who violates the timeline, it is challenging to end that contract and start over with a new investigator because doing so would further delay the process and increase expenses. In light of this situation, the Chancellor's Office may need to consider other options for ensuring that external investigators conduct timely investigations. For example, the Chancellor's Office could employ a systemwide pool of investigators who are external to the campuses but internal to the CSU system. Fresno State's Title IX task force made a similar recommendation in a report that the campus released in February 2023.[7] These investigators could better address and prioritize their cases since they would not have other professional commitments outside of their work at CSU.

In addition, campus staff did not always keep complainants up-to-date on the status of their cases. CSU's sexual harassment policy requires campuses to notify complainants and respondents at certain points prior to and during investigations, as the text box describes.[8] One of these points occurs when a campus extends an investigation time frame. Nonetheless, the case files for all 13 of the cases in Table 4 lacked documentation for one or more extension notices. For instance, an investigation involving a faculty respondent and student complainant lasted at least 241 working days.[9] The campus sent notices to the involved parties on three different occasions to extend the investigation timeline by 30 working days. However, the campus did not meet the investigation deadline specified in the third notice of extension, and it did not document in the case file any additional notices of extension to the complainant or respondent. The campus stated that the first and second extensions were due to the constraints of working remotely and the investigator's caseload and that the third extension

CSU's Sexual Harassment Policy Requires Campuses to Notify Involved Parties at Certain Points in the Investigation Process

CSU's sexual harassment policy requires Title IX coordinators to notify:

- Complainants whether their complaint is accepted for investigation.
- Respondents when a complaint against them has been accepted for investigation.
- Complainants and respondents of any extensions to investigation time frames.

The policy further requires campuses to provide the parties with a final investigation report and notice of investigation outcome, which summarizes the investigation findings and determinations.

Source: CSU's sexual harassment policy.

7 To ensure accountability and transparency, Fresno State created its Title IX task force in May 2022 to work in partnership with the external Title IX consultants appointed by the CSU trustees and provide guidance on implementing holistic responses to confronting sexual and gender-based harassment.

8 Although CSU's sexual harassment policy requires campuses to provide parties with a notice of investigation outcome, it does not require them to notify complainants of any discipline or corrective actions imposed on the respondent. We found that campuses were inconsistent in whether they notified complainants about the specific discipline or corrective action imposed on respondents in their cases.

9 This campus initially used the informal resolution process to address this case, but the campus subsequently changed it to an investigation at the complainant's request. As a result, the campus used the later date that the complainant filed a written complaint as the start date. We used this date to calculate the number of working days the campus took to complete the investigation: at least 241 working days.

was caused in part by pandemic workplace disruptions. However, it is not clear why the investigator did not provide notice and an explanation to the involved parties beyond the third extension.

Although CSU's sexual harassment policy requires the notifications we list above, it does not require Title IX coordinators to proactively provide additional status updates to complainants and respondents while the investigation is ongoing; instead, the parties must request them. Despite the lack of a formal requirement, San José State's interim Title IX coordinator explained that his practice is to ask complainants and respondents at the outset of a case about their preferences for receiving status updates; he then schedules periodic update meetings with each of them, such as every two weeks, if they so desire. Further, Fresno State's Title IX task force recommended that the campus explore creating a dashboard that would allow complainants and respondents to check the status of their specific cases at any time. The Chancellor's Office should consider requiring campuses to implement something similar to the dashboard or regular update meetings to provide complainants and respondents information on the status of their cases.

Because we found evidence of investigations that exceeded policy time frames at each of the four campuses we reviewed, we believe that the Chancellor's Office should implement a standardized system for tracking timelines across all of the campus Title IX offices. Such a system could not only assist staff in conducting timely investigations but also provide alerts to staff to send notices of extensions as deadlines approach. In fact, San José State now uses a spreadsheet to track the timeliness of active cases. Since CSU's current sexual harassment policy specifies some time frames in addition to those of investigations, such as time frames governing campuses' initial correspondence with complainants when deciding whether to conduct an investigation, the use of a standardized time-tracking system could also aid campuses in meeting other timeline requirements.

The Chancellor's Office Could Better Ensure That Campuses Adequately Safeguard Against Interference in Their Handling of Cases

We did not find any evidence in the 40 cases we reviewed that a campus official interfered with a campus's handling of a case. Nevertheless, we did identify areas in which the Chancellor's Office could improve campus safeguards against such interference. For example, when a campus first receives an allegation of sexual harassment, the campus must decide whether that allegation warrants investigation or closure. However, because the Chancellor's Office lacks comprehensive guidelines for how campuses should justify and document their decisions when they close cases at intake, we could not always identify the person who decided to close a case, that person's rationale, and whether anyone inappropriately interfered with that person's decision. Standardizing the initial assessment phase would reduce the risk that campuses may inappropriately close cases at intake as the result of interference. As a part of such a standardization, the Chancellor's Office could require campuses to document the Title IX coordinator's approval of the determination in this phase, as well as the decision maker's rationale.

In contrast to the intake and initial assessment process, the formal investigation process has some built-in safeguards against interference from individuals who may be biased or have personal relationships with involved parties. For example, the fact that a complainant or respondent may appeal an investigation's outcome to the Chancellor's Office limits opportunities for campus officials to exhibit bias without independent oversight of their work. The investigations with substantiated allegations that we reviewed also tended to involve higher levels of discipline, such as suspension or termination, and therefore sometimes included processes for administering the discipline that were more rigorous than the processes for administering corrective action, as outlined in employees' collective bargaining agreements. That said, we reviewed three cases in which a respondent's appeal to the Chancellor's Office raised concerns that the original investigator of the case had had too much power or was biased against the respondent. Although the Chancellor's Office did not agree with those concerns, providing additional checks and balances for investigators could help ensure that all parties involved feel confident about the independence of the process.

The Chancellor's Office could provide such checks and balances in part by requiring a documented review and approval by someone other than the primary investigator on each case of reported sexual harassment. This solution would also help address some of our concerns with deficiencies in the campuses' investigation reports. As we previously mention, CSU's current sexual harassment policy requires the Title IX coordinator to either investigate the complaint or assign that task to another investigator, in which case the coordinator must oversee the investigation and ensure that it complies with procedures in CSU policy. More generally, CSU policy requires the coordinator to make reasonable efforts to ensure that anyone involved in conducting investigations, finding facts, and making disciplinary decisions is impartial, neutral, and free from conflicts of interest. To expand the coordinators' important oversight role, the Chancellor's Office could require that coordinators perform only the function of a reviewer—rather than that of an investigator—for all investigations, as well as for all cases that a campus closes at intake.

Some current practices may already align with this idea: campus Title IX coordinators explained that they generally delegate investigations to their staff or external investigators. In addition, in 2022 San José State developed written protocols for its intake and initial assessment process that require staff members to handle each case, and the Title IX coordinator or another official to review their key decisions about the case, before the campus either closes the case at intake or decides to begin an investigation. Implementing the change we have suggested for all reports of sexual harassment systemwide may require additional staffing, a concern that the Chancellor's Office raised for several of our proposed recommendations. CSU's assistant vice chancellor and chief counsel for civil rights explained that smaller campuses or those with fewer resources may still need the Title IX coordinator to serve as the investigator in certain instances. However, in these cases, another qualified individual could review the work of the coordinator to ensure that the campus documents evidence of its review.

Please refer to pages 59–64 at the end of this report to find the recommendations that we have made as a result of these audit findings.

Blank page inserted for reproduction purposes only.

Chapter 2

THE CHANCELLOR'S OFFICE HAS NOT ALWAYS ENSURED THAT CAMPUSES ADDRESS SEXUAL HARASSMENT THROUGH DISCIPLINE AND CORRECTIVE ACTIONS

Chapter Summary

Although it is critical for campuses to perform thorough, timely investigations to ensure that they identify instances of sexual harassment, it is equally important for them to implement appropriate discipline or corrective action once they have identified such behavior. In the absence of an adequate administrative response, sexual harassment or other problematic behavior may reoccur or continue. Nonetheless, we identified seven cases in which campuses either did not initiate appropriate discipline or corrective action or did not document implementing any discipline or corrective action. In four cases, the campuses' disciplinary or corrective actions were not taken in a timely manner; in fact, in one instance, the campus waited more than five years before issuing a letter of reprimand. We also identified gaps in CSU's policies related to retreat rights and letters of recommendation that could allow campuses to inappropriately endorse employees for other positions after they have been found responsible for sexual harassment. Finally, the Chancellor's Office has yet to establish a systemwide policy or systemwide procedures related to unprofessional conduct that does not rise to the level of sexual harassment; consequently, the campuses have handled such instances inconsistently and at times inadequately.

In Seven Cases We Reviewed, Campuses Did Not Consistently Implement or Document Corrective and Disciplinary Actions

Corrective and disciplinary actions—examples of which we show in the text box—are critical to creating a harassment-free environment for CSU's students and employees.[10] Nonetheless, we identified significant problems related to campuses' implementation of discipline or corrective actions in seven cases, which Table 5 lists. Campuses conducted investigations for some of these cases and closed others at intake. In each instance, the respective campus established the need for discipline or corrective action but then did not properly initiate or document it. Figure 8 shows three examples of these cases. CSU's sexual harassment policy does not require the coordinators to document the details of each case's outcome before closing a case file, nor does it require campus personnel administrators to report back to the coordinators if discipline or corrective action has been taken.

Common Examples of Corrective and Disciplinary Actions

Corrective Actions:

- Verbal counseling
- Training
- Letter of reprimand

Disciplinary Actions:

- Suspension
- Demotion
- Termination

Source: State law, CSU policy, collective bargaining agreements, and review of campus sexual harassment case files.

[10] As we explain in the Introduction, we use the term *corrective action* to mean any effort to correct alleged behavior, exclusive of discipline. In contrast, we use the terms *discipline* or *disciplinary action* when referring to suspension, demotion, or termination.

Table 5
In Seven Cases, Campuses Could Not Demonstrate That They Implemented Appropriate Corrective Action or Discipline

CASE	RESOLUTION TYPE	INVESTIGATIVE DETERMINATION ABOUT SEXUAL HARASSMENT (AS APPLICABLE)*	CAMPUS DID NOT INITIATE APPROPRIATE CORRECTIVE ACTION/DISCIPLINE	CAMPUS DID NOT DEMONSTRATE IT TOOK ANY CORRECTIVE ACTION
Campus A				
Case #10	Investigation	Substantiated	X	
Campus B				
Case #3	Closed at Intake	NA		X
Case #5	Closed at Intake	NA	X	
Campus C				
Case #1	Closed at Intake	NA		X
Case #3	Closed at Intake	NA		X
Case #7	Investigation	Not Substantiated		X
Case #9	Investigation	Substantiated	X	

Source: Campus sexual harassment case files and employee personnel files.

NA: Not applicable.

* In the cases the table identifies as closed at intake or investigated but not substantiated, the respective campuses nevertheless identified the need for some type of corrective action.

Figure 8
Campuses Could Not Consistently Demonstrate That They Provided Appropriate Discipline or Corrective Action to Address Problematic Behavior

CASE EXAMPLE 5

A male employee reported that another male employee made numerous unwelcome sexual comments toward him for more than a year. After conducting an investigation, the campus determined that the accused employee had violated CSU's policy on sexual harassment.

The investigation was not completed in a timely manner, with more than a year passing between intake and the investigation report. The accused employee filed an unfair practices charge with the California Public Employment Relations Board on this basis.

The unfair practices charge led to a settlement agreement in which it was agreed that the campus would deliver a letter of reprimand to the employee. The campus did not deliver the written reprimand, on the basis that too much time had passed and that the employee's manager had counseled him. According to a personnel administrator, COVID-19 response activities and general workload were contributing factors.

CASE EXAMPLE 6

A student reported that a male faculty member made inappropriate comments to her, consistently walked her toward her residence after class, and made other inappropriate comments about his and her personal/romantic lives.

Another individual had reported an allegation of misconduct against this employee two months prior.

The campus Title IX office closed the case at intake and referred it to the academic department to address the behavior, but the case file did not contain any information about the resolution of the case. The current personnel administrator with oversight of faculty is not aware of any conversations or counseling that may have taken place regarding the alleged conduct.

CASE EXAMPLE 7

A female faculty member reported that a male faculty member made recurring inappropriate comments about her appearance or that were sexual in nature, including via text message. The complainant did not appear to want an investigation but felt uncomfortable and was concerned about the respondent's behavior affecting others. The faculty member also indicated that the respondent had said something sexual in nature to another professor that made the professor uncomfortable.

The campus Title IX office closed the case at intake and referred it to an academic administrator to have a conversation with the respondent. Although the office followed up with the administrator, the case file did not contain any response from the administrator. The current Title IX coordinator indicated that the campus had no further information to provide about whether the conversation occurred or what it entailed.

Source: Campus sexual harassment case files and personnel files.

Of the 11 investigations we reviewed in which campuses found that employees had violated CSU's sexual harassment policy, campuses may not have implemented adequate corrective or disciplinary action in two. When an investigator substantiates a finding of sexual harassment, the campus Title IX coordinator typically refers the case to personnel administrators to determine appropriate discipline or corrective action. Nonetheless, in the two cases in question, the campuses did not initiate appropriate corrective or disciplinary action after determining that the respondents had violated policy. One of these cases is depicted in Figure 8 as Example 5, while the other is shown in Figure 9.

In the case we describe in Figure 9, the campus delivered a letter of reprimand in May 2022 to a professor it had found responsible for sexual harassment, sexual violence, and stalking in 2016. As we discuss later, the length of time between the final investigation report and the reprimand was itself problematic. Moreover, letters of reprimand are not considered discipline for CSU employees. The letter of reprimand merely stated that, if similar behavior ensued, the university might take disciplinary action. The absence of discipline in this case is particularly concerning because of the severity of the conduct and the professor's history of similar complaints.

Figure 9
The Campus Did Not Provide Timely Corrective Action to an Employee After Substantiating a Sexual Harassment Complaint

In 2016 the campus investigated allegations of sexual harassment made by a female student against her male professor. An investigator **substantiated the allegations** of sexual harassment, sexual violence—including touching of a sensitive body part—and stalking and found that the **professor violated CSU policy**.

Despite the finding, the university **did not discipline the professor**, even though he had been the subject of similar complaints since 2003, including a past finding of sexual harassment in 2005, for which he was disciplined. The case file indicates that the Title IX coordinator referred the results of the investigation to personnel administrators in 2016. However, the reasons for the lack of discipline in 2016 remain unclear.

Nearly three years later, in 2019, the campus discovered it had **missed the statute of limitations** for imposing other disciplinary action. Moreover, the campus did not issue a letter of reprimand for the 2016 case until May 2022.

Source: Campus case file and personnel file.

Further, another report alleged in 2022 that the professor engaged in inappropriate conduct in front of other faculty, which reinforces our concern that the minimal level of corrective action the campus implemented was not effective. This professor is also participating in a faculty early-retirement program that reduces his employment to half-time until his anticipated retirement. The personnel administrator for that campus stated that given the professor's past behavior, the campus is making every effort to keep him away from the classroom and engaged only in projects that do not involve students.

We identified similar problems when we reviewed cases closed at intake. Specifically, campus Title IX staff also closed three cases at intake that they referred to other departments for corrective actions, yet we found no evidence of action taken. Examples of two of these cases are detailed in Figure 8 as Examples 6 and 7.

In another case closed at intake, the campus's corrective actions were not sufficient to deter the respondent from repeating his behavior. A female student had reported that the male faculty respondent had asked her out and repeatedly hugged her and kissed her cheek. The campus Title IX coordinator and a personnel administrator met with the faculty respondent to address his behavior through a conversation. The same individual was the subject of similar allegations of sexual harassment three years later, when another faculty member reported that the respondent had commented on a female student's body, asked her out, and said, "If I was younger, I would date you." The fact that this behavior reoccurred suggests that the initial corrective action was not sufficient.

Moreover, the campus did not document any corrective actions it took in response to this new complaint. The campus Title IX coordinator noted that this second student complainant did not respond to multiple attempts to contact her. We understand that a campus may be limited in the actions it can take when complainants are unwilling to participate. However, given that this faculty member had been the subject of two reports of similar behavior and that he appeared to continue this behavior even after meeting with the Title IX coordinator and the personnel administrator, we are concerned that the campus could not demonstrate that it took any corrective action after the second report.

In those instances when campuses did administer corrective or disciplinary action after an investigation found a violation of the sexual harassment policy, the campuses often did not clearly document their rationales for the level of actions or discipline they implemented. CSU policy does not require a rationale for all decisions regarding corrective or disciplinary action in sexual harassment cases. According to campus personnel administrators, campuses commonly consider factors such as the severity of the conduct, past findings, and past discipline or corrective actions. However, in the case records we reviewed, campuses generally did not elaborate on how the specific level of discipline they proposed or implemented corresponded to the nature and circumstances of the conduct in question.

Although campus officials indicated that decision makers deliberated about the appropriate level of discipline in each case, the campuses did not formally document these deliberations and the factors considered. CSU's assistant vice chancellor and chief counsel for civil rights explained that requiring campuses to document a more specific rationale for the level of discipline they impose could provide more opportunities for respondents to challenge disciplinary decisions on appeal or in court. While we understand these concerns, the Joint Legislative Audit Committee directed us to assess whether the discipline administered in

the cases we reviewed was generally proportional to the conduct. The lack of documented rationale for corrective or disciplinary action limited our analysis of the level of discipline implemented. Nevertheless, as we discuss previously, requiring the Title IX coordinators to document the details of each case's outcome in the sexual harassment case file would, at least, better ensure that campuses follow through with initiating appropriate and timely corrective or disciplinary actions that prevent future harassment.

In Four Cases We Reviewed, Campuses Did Not Implement Prompt Corrective or Disciplinary Actions

Campuses took from four months up to five years after the conclusion of investigations to impose discipline or corrective action in four of the cases we reviewed. The most lengthy delay involved the case we show in Figure 9, when a campus did not reprimand a faculty respondent until more than five years after he was found to have engaged in sexually harassing conduct toward a student complainant—and by that point, it was too late to impose discipline. The campus did not issue the reprimand to this respondent until a new personnel administrator reviewed the case in 2022.

In another case, a different campus did not initiate the discipline process by notifying the respondent of his pending termination until more than five months after it substantiated a finding of sexual harassment. The reason for this delay is unclear. The respondent also then appealed the termination to the State Personnel Board. Consequently, the campus took more than one year after completing the investigation process before it ultimately settled with the respondent, which resulted in the respondent's resignation. The personnel administrator explained that disciplinary decisions can take time to coordinate because of the number of required reviewing parties involved, precedents established by law and policy, and the preparation necessary to justify serious discipline in accordance with standards established by potential appeal forums such as the State Personnel Board. The administrator also pointed out that the respondent was on paid administrative leave during the investigation and discipline processes and therefore was not permitted to be on campus during that time.

Various sources lay out timeliness requirements for administering discipline when a campus substantiates misconduct. State law requires disciplinary actions against state employees to be initiated within three years of the cause for discipline, meaning that campuses typically have up to three years to notify employees of any pending disciplinary action after determining that such action is warranted. In addition, state law and collective bargaining agreements for faculty employees set forth specific time frames for allowing individuals to review pending disciplinary action and also include specific time frames for the process by which faculty employees may appeal that discipline.

In contrast, CSU's sexual harassment policy indicates that campuses will respond in a timely and appropriate manner to correct policy violations but does not specify any time frames for initiating or administering discipline or corrective action to individuals found responsible for violating the policy. It also does not include time frames for addressing behavior that did not violate the policy but was still deemed to be unprofessional or inappropriate.

Although we found that, in some cases, collective bargaining agreement time frames lengthened the overall amount of time campuses took to administer discipline, we did not find that these time frames were the sole reason for the campuses' lack of prompt action. Indeed, we observed instances in which campuses did not take prompt corrective action in the absence of any time frame in either CSU's sexual harassment policy or its collective bargaining agreements. For example, neither CSU's sexual harassment policy nor its collective bargaining agreements establish any time frames for issuing reprimands to faculty employees. This gap suggests that the Chancellor's Office should provide additional guidance to campuses to address the timeliness of corrective actions in all cases in which other time frames do not apply.

Administrators Who Violate CSU's Sexual Harassment Policy May Still Be Able to Retreat to Faculty Positions or Receive Positive Recommendations

Like other universities, CSU allows certain executive and management employees to be reassigned to a faculty position at the end of an administrative assignment—a benefit known as *retreat rights* or the *option to retreat*. A campus makes the decision to grant the option to retreat to an administrator upon hiring the individual, and the individual's appointment letter memorializes the details. However, in 2022 CSU came under scrutiny for its practice of allowing employees who are terminated from administrative positions to return to faculty positions. According to CSU's vice chancellor of human resources, CSU did not have a systemwide policy to govern retreat rights at the time, so it was up to individual campuses to develop their own relevant policies.

At the four campuses we reviewed, we did not identify any individuals who were subject to a finding of sexual harassment and had subsequently retreated to a faculty position. Based on information provided by the campuses, 121 executive and management employees held retreat rights from 2016 through 2022. Of those 121, we found two who were accused of sexual harassment. One of these cases resulted in a finding that the employee had engaged in sexual harassment, but the individual left the campus under the terms of a settlement agreement and did not exercise retreat rights. The second case was not investigated because the complainant did not wish to pursue an investigation, although the campus took corrective action in the form of in-person counseling.

In 2022 the Chancellor's Office created a new systemwide policy specifying that an employee is ineligible to exercise the option to retreat when he or she is subject to a finding that results in termination or other separation from the university, such as non-retention. The text box shows the terms of the new policy. It generally aligns with similar policies at the University of California and the University of North Carolina, which also place limitations on an employee's ability to exercise retreat rights in certain circumstances.

CSU Recently Created a Policy Determining Ineligibility to Exercise the Option to Retreat

"An administrator will be ineligible to exercise their option to retreat ... [if] a finding resulted in the administrator being non-retained, terminated, or separated through mutually agreed upon settlement terms."

"Allegations for which no findings have been made should not serve as a basis for denying an option to retreat."

"[If] the administrator is under investigation for misconduct or violation of university policy that could result in a finding, the retreat determination shall be [delayed] until the completion of the investigation and any appeals."

Source: CSU policy on the option to retreat.

However, CSU's new policy has limitations: it may allow employees with findings of sexual harassment who were not terminated to retreat. According to the vice chancellor of human resources, the university will take appropriate action in response to a finding that an executive or management employee engaged in sexual harassment. The vice chancellor stated that whether the executive or management employee is terminated or non-retained would depend on the specific facts and circumstances of the case, such as the nature and seriousness of the employee's conduct, and the employee's role and responsibilities. However, she further noted that the university could also terminate or non-retain these "at-will" employees for any non-discriminatory reason, even if a sexual harassment complaint is not substantiated, if the university determines that it has lost confidence in the employee's judgment or ability to effectively perform the job. We reviewed two cases in which employees were non-retained or separated following a finding of sexual harassment. However, CSU may not always remove employees with severe conduct since these determinations are discretionary, as the vice chancellor explained. To address this gap, the Chancellor's Office could consider revising its policy to prohibit employees with findings of sexual harassment from retreating to faculty positions.

For CSU executives—the chancellor, executive vice chancellors, vice chancellors, and presidents—retreat rights are often accompanied by the benefit of participation in an executive transition program. This program provides a period of compensation and support after an executive no longer works in an executive role to help the individual prepare for another role at CSU, such as teaching as a faculty member. Although CSU created a new program in 2022 to replace the executive transition program, executives hired before then can still participate in the previous program if they meet eligibility requirements. As of December 2022, CSU had a total of 29 executives. Of those, 22 held retreat rights, and 24 qualified for the executive transition program.

CSU's new program limits the transition period to six months and stipulates that the departing executive should not receive a salary more than 50 percent of his or her executive base pay. In addition, departing executives are expected to perform certain duties, such as consulting with their replacements. Because the new program has more appropriate restrictions on compensation than the previous executive transition program, we do not have concerns with CSU's new program.

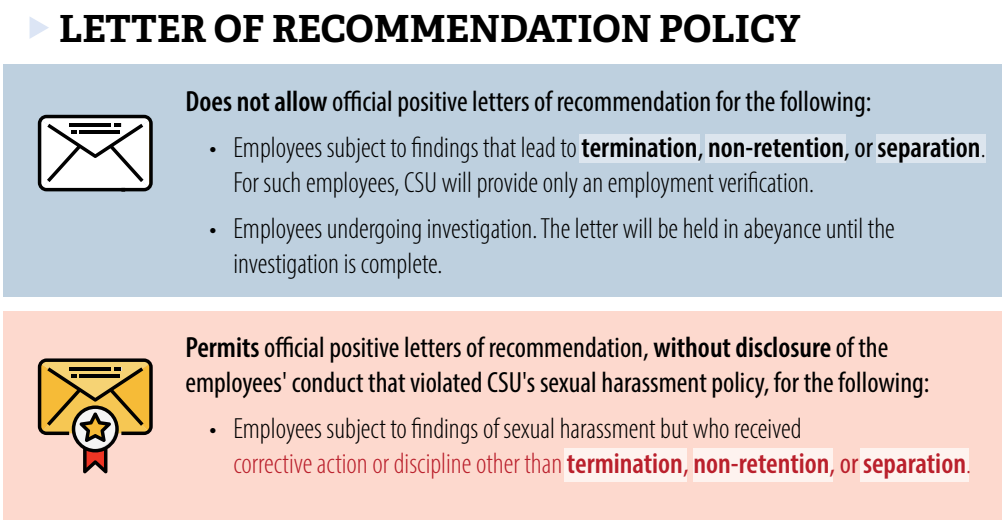
Four of the cases we reviewed resulted in settlement agreements. The terms of these settlement agreements varied, but they generally contained certain conditions for the respondents, such as training, a letter of reprimand, suspension without pay, or voluntary resignation. In exchange, the campuses granted concessions to the respondents, such as monetary awards or removal of disciplinary documents from a personnel file. For example, one settlement agreement granted a respondent paid administrative leave for several additional months beyond the date of the agreement in exchange for that individual's eventual resignation from CSU.

CSU's assistant vice chancellor and chief counsel for civil rights noted that settlements are sometimes the best way to achieve closure and ensure the safety of the complainant and the campus community by guaranteeing the removal of an employee. In the above case, the respondent had appealed his termination to the

State Personnel Board, which had the power to reinstate the employee and award him back pay. The assistant vice chancellor indicated that the settlement agreement was the most effective way to ensure that the respondent resigned and would not reapply to CSU for employment. We do not dispute the effectiveness and necessity of settlement agreements in certain circumstances to achieve the most satisfactory outcome for all involved parties.

In another case, one of the provisions of the respondent's settlement agreement was an official letter of reference from the president of the university. The Chancellor's Office has partially addressed this type of provision with a new policy that specifies that any employee terminated, non-retained, or separated as a result of a finding of sexual harassment cannot receive official positive letters of recommendation, as Figure 10 shows.[11] However, the policy allows an individual with a finding of sexual harassment that leads to lesser discipline, such as suspension or demotion, to obtain an official positive recommendation letter without disclosure of that finding. We identified seven cases in which employees had findings of sexual harassment yet, under the new policy, would be entitled to obtain an official positive letter of recommendation that does not disclose their past conduct.

Figure 10
CSU's Policy Allows Employees Who Have Been Found Responsible for Sexual Harassment to Receive Positive Letters of Recommendation Under Certain Circumstances


LETTER OF RECOMMENDATION POLICY
Does not allow official positive letters of recommendation for the following:
• Employees subject to findings that lead to termination, non-retention, or separation. For such employees, CSU will provide only an employment verification.
• Employees undergoing investigation. The letter will be held in abeyance until the investigation is complete.
Permits official positive letters of recommendation, without disclosure of the employees' conduct that violated CSU's sexual harassment policy, for the following:
• Employees subject to findings of sexual harassment but who received corrective action or discipline other than termination, non-retention, or separation.

Source: CSU's letter of recommendation policy.

[11] When an individual is terminated because of a finding of sexual harassment, the campus will provide only an employment verification. The policy does allow personal references, which are provided in an individual capacity, with the caveat that presidents, executives, and other employees in senior administrative positions who might be perceived as acting on behalf of the university must consult with Human Resources or Faculty Affairs before providing a reference.

For example, the faculty member described in Figure 9 who had a substantiated finding of sexual harassment, sexual violence, and stalking could qualify for receiving an official positive letter of recommendation, because the discipline for that case did not include termination. To close this gap, CSU should amend its recommendations policy to prohibit official positive letters for all employees with substantiated findings of sexual harassment, including those who receive discipline that does not result in their separation. Alternatively, CSU could consider revising the policy to require disclosing in letters of recommendation that those employees were disciplined for violations of CSU's sexual harassment policy.

Campuses Have Taken Inconsistent Approaches to Addressing Unprofessional Conduct

In cases when an investigator does not substantiate a finding of sexual harassment, campuses can still take corrective or disciplinary action to address unprofessional or problematic behavior. By proactively addressing this type of behavior, campuses can help to ensure that the behaviors do not continue or escalate. However, the campuses responded inconsistently in the seven cases we reviewed in which formal investigations found that at least some of the alleged conduct had occurred but that the conduct did not fall within CSU's definition of *sexual harassment*. Table 6 shows the investigation findings and corrective or disciplinary actions taken in each of these seven cases.

Table 6
Campuses Responded Inconsistently to Cases Involving Unprofessional Conduct

	CAMPUS FOUND THAT CONDUCT ...				
CASE	VIOLATED CSU'S SEXUAL HARASSMENT POLICY	WAS UNPROFESSIONAL AND/OR INAPPROPRIATE	VIOLATED ANY POLICY RELATED TO UNPROFESSIONAL CONDUCT	CORRECTIVE OR DISCIPLINARY ACTION TAKEN?	TYPE OF CORRECTIVE OR DISCIPLINARY ACTION
Campus A					
Case #1	No	Yes	Yes	Yes	Letter of reprimand and verbal conversation with respondent
Campus B					
Case #2	No	Yes	No	No*	NA*
Case #4	No	Yes	Yes	Yes	Letter of reprimand
Case #6	No	Yes	No	No	NA
Case #8	No	Yes	No	Yes	Letter of reprimand
Campus C					
Case #7	No	Yes	No	No	NA
Campus D					
Case #1	No	Yes	No	No*	NA*

Source: Campus sexual harassment case files.

Note: Red shading indicates that we had concerns about how the campus responded to the unprofessional conduct, because the campus did not make any policy violation findings and, in two cases, did not take corrective or disciplinary action.

NA: Not applicable.

* The respondent left the campus prior to the investigation's conclusion.

In two of the cases where the respondents continued working on campus, the campus did not take any action to address the unprofessional conduct they found had likely occurred, which included behavior such as a respondent's discussing with a student-worker his romantic relationship and a different respondent's touching a complainant's hair. The text box provides an example of one such case that included allegations of inappropriate comments and touching, as we describe in more detail earlier under Example 3 in Figure 6. The investigation found that the respondent's conduct was unprofessional and noted that the conduct could be considered sexual in nature, although it did not violate CSU's sexual harassment policy. The campus could not provide evidence that it took any disciplinary or corrective action. Instead, the investigation report pointed out that the respondent had not taken CSU's existing mandatory sexual harassment training and that doing so could provide the respondent with a better understanding of the actions that gave rise to the complaint.

One Campus Found That Unprofessional Conduct Had Occurred, Yet It Took No Subsequent Action to Address the Conduct

Campus's determination: "Although the substantiated conduct could be considered sexual in nature ... the respondent's actions did not rise to the level of sexual harassment as defined by [CSU policy]; as such, the respondent has not violated university policy. Nonetheless, the respondent's conduct was unprofessional and inappropriate for an educational and workplace setting. The respondent should be advised that continued conduct of this nature with anyone in the [campus] community could demonstrate a pattern of behavior that might rise to the level of sexual harassment as defined by university policy and therefore constitute a policy violation."

Despite the above determination, the campus did not find that the substantiated conduct violated any other policy nor document any discipline or corrective actions, such as a verbal conversation or written reprimand, that it took to address the unprofessional conduct.

Source: Sexual harassment investigation report.

Note: See Example 3 in Figure 6 for more details about the specific allegations in this case.

In another case at a different campus, an investigation similarly concluded that the respondent's conduct could be deemed inappropriate or unprofessional but that it had not violated CSU's sexual harassment policy. This conduct included the respondent's contacting a student-worker to discuss his romantic relationship and asking the student-worker to spend time with the respondent outside of class. The investigation report stated that the respondent's supervisor should address the behavior; however, we found no evidence in the case file or in the respondent's personnel file of any related disciplinary or corrective actions.

In contrast, some campuses did take specific action to address similarly problematic behavior in three other cases. For example, one campus completed an additional report beyond its sexual harassment investigation report; in the second report, the campus analyzed whether the respondent's behavior had violated various campus and departmental policies and procedures related to professionalism. The campus concluded that the behavior—such as referring to students using terms like "baby girl" that it said could have flirtatious connotations—had violated these other policies, and it issued the respondent a letter of reprimand related to unprofessional conduct. In another case at a different campus, an investigation report recommended that the campus consider taking appropriate action to address a respondent's behavior, which included an inappropriate comment that a student's clothing was too revealing, among other conduct. The campus subsequently issued a letter of reprimand indicating that the respondent had violated a campus-specific policy related to respecting others.

Although the campuses took corrective action in some cases, their approaches to addressing unprofessional conduct were inconsistent, even among cases within the same campus. The inconsistent approaches meant that campuses sometimes found that a respondent's behavior was unprofessional or inappropriate but did not find that the behavior violated any policy and did not take any corrective or disciplinary action, as Table 6 on page 46 shows. These inconsistencies likely occurred in part because CSU's sexual harassment policy is silent on how to address unprofessional conduct. Therefore, the policy does not require investigations to consider whether respondents may have engaged in such conduct. In fact, according to the systemwide Title IX compliance officer, CSU does not have a systemwide policy that explicitly prohibits unprofessional conduct, despite a state law identifying unprofessional conduct as a cause for discipline. The systemwide Title IX compliance officer stated that she has participated in discussions about the possible need for a policy to address unprofessional conduct that does not meet the threshold of CSU's definition of *sexual harassment*. In the absence of such a policy, however, campuses may continue to inconsistently handle conduct that is unprofessional but does not constitute sexual harassment.

San José State began implementing a new approach for handling cases involving unprofessional conduct. According to the San José State interim Title IX coordinator, starting in June 2022, the campus now addresses unprofessional conduct during the investigation process by including among its criteria the state law that allows CSU to discipline employees for unprofessional conduct and a campus-specific policy related to academic freedom and professional responsibility that applies to faculty employees. This approach provides opportunities to include formal findings of policy violations related to unprofessional conduct in the final sexual harassment investigation report, something we did not see in any of the investigations we reviewed. Such an approach is important because it better positions the campus to identify unprofessional behavior, even if that behavior does not constitute sexual harassment, and ultimately to pursue appropriate discipline or corrective action more consistently.

Please refer to pages 59–64 at the end of this report to find the recommendations that we have made as a result of these audit findings.

Chapter 3

THE CHANCELLOR'S OFFICE MUST TAKE A MORE ACTIVE APPROACH TO PREVENTING AND ADDRESSING SEXUAL HARASSMENT

Chapter Summary

To adequately deter and address sexual harassment systemwide, the Chancellor's Office must take a more active approach to providing guidance and oversight to the campuses. The current lack of guidance and oversight in several key areas has resulted in deficiencies and inconsistencies in the campuses' investigations of complaints and administration of discipline and corrective action. In addition, the Chancellor's Office has not established adequate systemwide requirements or best practices for data collection and analysis, as well as for assessing campus culture and students' and employees' knowledge of reporting options. The Chancellor's Office has also discontinued performing routine reviews of campuses to ensure that they have implemented its current guidance and policy requirements. The Chancellor's Office has expressed hesitancy to prescribe or enforce requirements for campuses and asserted that a lack of funding and resources hinders the university's Title IX response. However, additional systemwide oversight is necessary to ensure that campuses prevent and address sexual harassment, given the weaknesses we discuss in Chapters 1 and 2.

Inconsistencies in Campuses' Responses to Sexual Harassment Allegations Justify Systemwide Changes

The campuses' responses to the sexual harassment allegations that we reviewed demonstrated a level of inconsistency from case to case and from campus to campus that warrants stronger systemwide oversight. For example, in our review of selected cases that campuses closed without conducting an investigation, one of the campuses appeared to close several cases primarily because it determined that the reported conduct did not constitute a sexual harassment policy violation. It did so despite the cases containing concerning allegations and despite complainants participating, submitting written complaints, and in some instances explicitly requesting that the campus take formal action to address their concerns. This difference suggests that in certain instances, campuses may use different thresholds for determining whether alleged conduct qualifies as sexual harassment and warrants an investigation.

We also observed inconsistencies in the way campuses handled cases settled through informal resolution, a voluntary process that parties can choose to use instead of the investigation process. The terms of an informal resolution agreement must be in writing and signed by both parties and the Title IX coordinator. Three of the four cases we reviewed that used informal resolution had documented such agreements. However, the agreements themselves varied significantly in terms of the resolutions reached, possibly because of the differences in remedies that the complainants proposed. For example, in one case, the alleged conduct included a variety of inappropriate remarks and communications and more than one instance of inappropriate touching. The parties' resolution agreement included a summary of

how each party felt about the allegations and the respondent's apology, but no other corrective actions. In contrast, in a case from a different campus, the alleged conduct included one instance of an inappropriate hug, yet the eventual resolution agreement resulted in a letter of reprimand in the respondent's personnel file and required training for the respondent.

The significant difference in the outcomes for these two cases and the fact that each case appears to have relied primarily on the complainant to propose the outcome suggests that campuses may benefit from more standardization in the informal resolution process. CSU's current policy specifies that the Title IX coordinator will make the final determination about whether the terms of an informal resolution agreement are appropriate in light of the circumstances of the complaint, and it states that the informal resolution process may not be appropriate, depending on the nature or severity of the allegations. However, providing guidance about options for corrective action or maintaining a template for the structure of a resolution agreement could further reduce some of the pressure that this process likely places on the complainants. In addition, strengthening campuses' initial assessments of sexual harassment allegations, which we discuss in Chapter 1, would help ensure that campuses document clear rationales for not formally investigating allegations that they instead choose to resolve through informal resolution.

Most of the inconsistencies we identified in our review of the 40 cases in our selection did not merely reflect the different circumstances related to the specific cases. Rather, those inconsistencies demonstrate that a lack of systemwide guidance and oversight has resulted in complainants or respondents' experiences with the Title IX process differing significantly, depending on when and where they work or attend school within the CSU system. Our recommendations for more guidance and oversight are intended to help CSU address these inconsistencies.

We did not, however, identify significant differences in how the campuses handled investigations for different types of employee respondents in the cases we reviewed. CSU's sexual harassment policy generally includes the same investigative procedures for all types of employee respondents, and our review did not identify any major differences in the investigative approaches campuses used when respondents were faculty members and when they were non-faculty staff members, for example. However, the process and timeline for discipline can vary, depending on an employee's specific collective bargaining agreement. For example, CSU faculty have three options to appeal the pending disciplinary action, including requesting a hearing from a faculty committee, whereas under the collective bargaining agreement for certain academic professionals, these academic support employees may only appeal the disciplinary action to the State Personnel Board or via the agreement's grievance procedures in specified circumstances. Similarly, we noted that certain types of employees in the cases we reviewed, such as coaches, temporary faculty, and some administrators, did not have permanent appointments, which can make it easier for campuses to dismiss them when they engage in misconduct.

The Chancellor's Office's Inadequate Data Collection and Lack of Meaningful Analysis Limit Its Ability to Identify and Respond to Concerning Trends

The campuses vary in how they track reports of sexual harassment, which leads to inconsistencies in the data they record. CSU policy requires Title IX coordinators from each campus to annually report particular categories of data to the Chancellor's Office, as the text box lists. Although the Chancellor's Office collected this information for fiscal year 2021–22, it did not have this information for prior years because it did not previously collect data related to sexual harassment reports. However, the Chancellor's Office did collect data related to sexual misconduct, sexual assault, dating and domestic violence, and stalking in fiscal years 2019–20 through 2021–22.[12] Because we needed a complete list of sexual harassment reports from 2016 through 2022 to perform our audit work, we requested these data from the four campuses we reviewed. However, only Fresno State provided a list that was essentially complete. San José State and Sonoma State had lists that were incomplete, because they were missing reports and key details, which required us to manually compile the missing information by reviewing case files. Meanwhile, the Chancellor's Office could not provide us with a complete list of sexual harassment reports for its own employees, so we compiled a list manually through our review of electronic and physical case files.

CSU Began Collecting Sexual Harassment Data From Campuses in Fiscal Year 2021–22

These data include the following:

- The number of unresolved reports of sexual harassment.
- The number of reports sorted by respondent type, such as student or employee.
- The number of reports investigated with a finding.
- The number of reports resolved without investigation.
- The number and type of disciplinary or corrective actions imposed on respondents following an investigation with a finding or other form of resolution.

Source: CSU Title IX annual report data for fiscal year 2021–22.

The campuses we reviewed explained that they generally have to manually compile at least some of the information needed for their annual Title IX reports to the Chancellor's Office. Still, the lists of sexual harassment reports we obtained from Fresno State, San José State, and Sonoma State were missing key information such as the type of alleged misconduct, the names of involved parties, key dates, and outcomes, even though the Chancellor's Office also collects some of these data from campuses via annual reports. We saw similar inconsistencies when we reviewed sexual harassment data from the other 20 CSU campuses to compile the information we present in Appendix A.

[12] As we describe in Footnote 1 on page 5 in the Introduction, we use the term *sexual harassment* to refer to unwelcome sexual conduct, including domestic violence, dating violence, sexual assault, and stalking. However, the Chancellor's Office collects data from campuses on reports specific to each of these conduct types separately, which is why we list those categories separately in this section.

The Chancellor's Office does not require campuses to use a single case management system for documenting sexual harassment reports, likely affecting the consistency and completeness of the related data it collects from its campuses. We identified the use of a single system for storing sexual harassment reports and related documents as a best practice, as the text box explains. Although some of the campuses use a case management system to document this information, some do not. Further, the Chancellor's Office has not issued any guidance in its sexual harassment policy for the specific data that campuses should document in their case management systems, which has led to this lack of uniformity in how campuses track these data. For example, campuses used varying approaches to count the number of sexual harassment reports they received, sometimes counting multiple complainants alleging separate incidents of sexual harassing conduct against a single respondent as a single report, while at other times counting each allegation as a separate report.

The U.S. Department of Justice Has Recommended the Use Of a Single System For Documenting Sexual Harassment Reports

The U.S. Department of Justice's resolution agreements with certain universities suggest that it is best practice to use a single system for the secure electronic storage of all reports of sexual harassment and relevant documentation. The information in the system should include the following:

- The names of involved parties.
- The names of witnesses.
- Key dates during the process.
- Investigative documents.
- Correspondence with involved parties.
- Disciplinary actions taken.

Source: U.S. Department of Justice resolution agreements with San José State University, Utah State University, and University of New Mexico.

When we asked the systemwide Title IX compliance officer about the prospect of the CSU establishing a single case management system, she agreed that this change would be helpful for ensuring consistency. However, the assistant vice chancellor and chief counsel for civil rights pointed out that requiring each campus to adopt the same case management system could take significant time and resources and would depend on the availability of vendors' software. Nonetheless, he also acknowledged that it is advantageous to have a single case management system and said that if these concerns can be addressed, that it would be the better approach. In addition to requiring campuses to use the same case management system, the Chancellor's Office should provide guidance about standardizing the relevant data that campuses collect to ensure that the data are adequate for tracking trends that could inform their efforts to prevent and detect sexual harassment.

Organizations such as the U.S. Department of Justice and the National Association of Student Personnel Administrators have recognized the analysis of sexual harassment data to identify potentially concerning trends as a best practice for preventing and detecting sexual harassment. However, the Chancellor's Office has not fully implemented this practice. For fiscal years 2019–20 through 2021–22, the Chancellor's Office summarized the data it collected from campuses. For each period, it calculated statistics such as the total number of reports. For fiscal year 2020–21, it also calculated the number of employee respondents as a percentage of the total number of employees. For each of the three past reporting periods, the Chancellor's Office created charts showing the total number of reports broken down by the type of alleged misconduct and by the type of respondent. Additionally, for fiscal year 2021–22—the most recent reporting period—the Chancellor's Office

created charts showing the total number of reports versus the total number of investigations and the percentage of investigations broken down by each type of alleged misconduct.

Although these efforts represent a step in the right direction, the Chancellor's Office still lacks the information necessary to identify more specific patterns in the data. As a best practice, institutions should have a process for documenting, assessing, and responding to trends in reports of sexual harassment. This process should involve identifying and addressing any patterns involving repeat respondents, academic departments, or particular locations where misconduct occurs more frequently, and specific populations of students or employees that tend to be involved. The Chancellor's Office does not collect enough information to identify any of these types of patterns. For example, although Fresno State, San José State, and Sonoma State each had multiple employees who were respondents in two or more reports of sexual harassment, the Chancellor's Office does not collect information on the number of respondents subject to multiple allegations of sexual harassment over time. It therefore lacks the capacity to readily identify trends that show individuals who could be repeat subjects. Furthermore, the Chancellor's Office does not collect information on particular locations in which reported sexual harassment most often occur or information on particular student or employee populations that report or experience reported sexual harassment more often than others, which means it also cannot readily identify any trends related to these data.

The systemwide Title IX compliance officer agreed that it could be beneficial to collect more specific data and conduct analyses to identify and address any concerning trends. However, she indicated that doing so is the explicit responsibility of campus Title IX coordinators, and she expressed concerns about having sufficient staff in her unit to perform this work. CSU policy does, in fact, include identifying and addressing patterns of sexual harassment among campus Title IX coordinators' mandatory duties, but this requirement does not clearly describe the types of patterns that might be important for coordinators to look for, such as those described in best practices. More importantly, the Chancellor's Office has a legal responsibility to exercise oversight of its campuses to prevent sexual harassment. We believe that collecting and analyzing the necessary data at the systemwide level is a critical part of fulfilling this responsibility.

The Chancellor's Office could revise the categories of data that it collects in Title IX annual reports in order to obtain the data from campuses that we describe above. Until it does so, the Chancellor's Office will be unable to conduct meaningful analyses of the campuses' sexual harassment data in alignment with best practices. We believe these analyses are critical to its ability to prevent, detect, and address sexual harassment systemwide.

The Chancellor's Office Has Not Issued Comprehensive Best Practices for Preventing, Detecting, and Addressing Sexual Harassment

As part of this audit, we identified best practices from entities such as the U.S. Department of Justice that campuses should follow in preventing, detecting, and addressing sexual harassment. The text box lists the best practices we identified in addition to those that we describe elsewhere in this report. Although the campuses we reviewed generally made efforts to implement these best practices, the Chancellor's Office could improve the consistency and quality of the campuses' efforts by providing increased guidance in some areas.

We Identified Key Best Practices for Preventing, Detecting, and Addressing Sexual Harassment

- Maintain multiple accessible options for reporting sexual harassment.
- Widely disseminate reporting options and other informational materials to students and employees through webpages, emails, social media platforms, on-campus postings, student handbooks, and similar methods.
- Develop and distribute streamlined informational materials describing Title IX-related policies and procedures.
- Provide comprehensive training to students and employees and monitor whether they have completed it.
- Survey the campus community to monitor the effectiveness of these measures.

Source: Best practices from the U.S. Department of Justice, White House Task Force to Protect Students from Sexual Assault, Culture of Respect Engagement (CORE) Blueprint, and other sources.

The Chancellor's Office in 2023 finalized a systemwide policy on prevention, education, and awareness of sexual harassment (systemwide prevention policy). The policy includes detailed guidelines for providing employee and student training related to sexual harassment, such as explaining that training should cover employees' duty to report alleged sexual harassment. However, it does not include a similar level of guidance about some of the other key best practices we identified. For example, best practices establish that campuses should develop user-friendly, streamlined informational materials describing their processes related to sexual harassment and suggest a number of possible avenues, such as websites, campus-wide emails, social media platforms, and handouts, for publicizing this key information. In fact, the U.S. Department of Justice's resolution agreement with San José State included several measures for developing and distributing various streamlined informational materials. The agreement required that the materials address key topics such as options for reporting a concern, expectations and time frames for the complaint process, and employees' responsibilities upon receiving a report of sexual harassment. The agreement also stipulated that San José State email its campus community about these informational materials and regularly disseminate them by various means, including through its webpage and social media platforms. Although CSU policy includes some related guidelines—such as requiring that campuses annually share a notice of nondiscrimination with their communities, and that Title IX coordinators create a committee to identify strategies for ensuring that students and employees know how to report sexual harassment—these guidelines are not as comprehensive or specific as the best practices we identified from sources such as the U.S. Department of Justice.

In the absence of clear policy or guidance, campuses' communication efforts have varied in quality. For instance, consistent with provisions in its agreement with the U.S. Department of Justice, San José State developed and posted on its Title IX webpage several informational materials, including infographics with reporting options, flowcharts describing the complaint process, and a user-friendly guide for employees detailing how they should handle reports of sexual harassment. San José State's Title IX office also provided examples of emails it sent in 2022 and 2023 to its campus community that focused on these informational materials as well as other Title IX-related events, information, and updates, such as an update about its redesigned Title IX website and its campaign to raise awareness of its services by sharing information on screens across campus and on social media. However, other campuses' efforts to develop and share streamlined informational materials were not as robust. In fact, Fresno State's Title IX task force recently made recommendations to improve the campus's communication efforts, such as suggesting that the campus add infographics, flowcharts, and videos explaining policies and processes and that it add a section to the standard template that it uses for a course syllabus to include Title IX resources. Without coordinated efforts to communicate key information about their reporting options and Title IX processes, campuses risk instances of sexual harassment going unreported and therefore unaddressed.

Further, some of the campuses' practices have not aligned with best practices for conducting campuswide surveys to gauge employees' and students' attitudes, experiences, and awareness regarding topics such as sexual harassment (campus climate surveys). Such surveys might include questions to assess knowledge of Title IX resources. CSU has no policy explicitly requiring campuses to regularly conduct such surveys, even though an attachment to its sexual harassment policy states that a Title IX coordinator's official duties include assisting a campus in developing a survey and analyzing the results. All of the campuses we reviewed, with the exception of the Chancellor's Office, conducted some campuswide climate surveys from 2016 through 2022, yet none of them did so regularly.

Of particular note, although the campuses had generally published and discussed analyses of the survey results we reviewed, they could not provide evidence that they had consistently used those results to develop specific plans to address problem areas. These types of survey results can be quite valuable for campuses. For example, a 2016 survey of students at Fresno State indicated that fewer survey participants had reported sexual harassment than had experienced it. In another example, a 2021 campus climate survey at Sonoma State revealed that 38 percent of the student survey participants and 19 percent of employee participants did not know where to file a report. The campuses should use these types of responses to inform potential improvements to their programs.

The systemwide Title IX compliance officer explained that in the last decade, participation in conducting these surveys across the country has waned; however, she said that CSU campuses will conduct more surveys after the federal government releases its upcoming survey tool.[13] Several federal agencies and certain experts are responsible for developing this online survey tool for institutions of higher education such as CSU to use to gather information on student experiences with domestic violence, dating violence, sexual assault, sexual harassment, and stalking. Newly enacted state law requires CSU to submit a report on campus-level results of this online survey beginning one year after the date the tool becomes available and every two years thereafter. To maximize the impact of this tool and any other surveys that campuses may conduct, the Chancellor's Office should provide additional guidance to campuses for making effective use of climate surveys, such as surveying both employees and students, designing surveys to assess the effectiveness of their sexual harassment prevention and education efforts, and establishing a process for analyzing and responding to the survey results.

The Chancellor's Office No Longer Conducts Reviews of Campuses' Compliance With Its Sexual Harassment Policy

The Chancellor's Office does not currently perform reviews of campuses' compliance with Title IX and CSU's sexual harassment policy, despite its previous commitment to do so. In 2014 our office recommended that the Chancellor's Office conduct routine reviews to ensure that its campuses are complying with Title IX requirements.[14] The Chancellor's Office accepted this recommendation and, in an internal memo, committed to conducting reviews of all of its campuses on a three-year cycle. Although our recommendation from 2014 did not require the Chancellor's Office to review campuses' compliance with CSU policy, the Chancellor's Office also addressed this topic in the campus reviews it conducted.

The systemwide Title IX compliance officer at the time conducted reviews of 19 campuses from 2015 through 2018, but neither she nor any other staff at the Chancellor's Office conducted reviews at the four remaining campuses. The Chancellor's Office also did not conduct any other reviews after 2018. The current systemwide Title IX compliance officer provided documents indicating that the Chancellor's Office had developed several draft materials after 2018 outlining protocols for an updated campus review process, such as proposed interview questions to ask campus staff and descriptions of the specific components that reviews would assess. However, one of the documents notes that barriers to implementation of this process included leadership transition, response to the COVID-19 pandemic, and competing priorities, such as responding to new legislative and regulatory requirements. Because the Chancellor's Office has not conducted any campus reviews since 2018, it is lacking current information on the campuses' handling of sexual harassment reports. Such a lack of information inherently limits the Chancellor's Office's ability to provide targeted guidance to address inconsistencies and noncompliance in the campuses' handling of allegations.

13 The deadline for this tool is not expressly specified in federal law. However, the law requires federal reporting on certain information gained from the survey tool beginning no later than March 2024.

14 *Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents*, Report 2013-124, June 2014.

Because the Chancellor's Office did not memorialize in policy its prior commitment to conduct reviews of all of its campuses every three years, it has not required its systemwide Title IX officers to perform ongoing reviews. The systemwide Title IX compliance officer agreed that it could be beneficial for the Chancellor's Office to resume conducting routine campus reviews, but she also expressed concern that her unit may not have sufficient staff to do so. The systemwide Title IX unit currently has only four staff members: the systemwide Title IX compliance officer, an associate director, an interim assistant director, and an administrative assistant. Although the Chancellor's Office will need to evaluate the number of staff in its systemwide Title IX compliance unit or its other units necessary to implement periodic reviews, we believe that such reviews should be a priority.

It is also unclear whether the Chancellor's Office took action to address the concerns it noted in the campus reviews it did conduct. It created the systemwide Title IX compliance officer position in 2014 to actively address issues related to sex discrimination. The duties of the systemwide Title IX compliance officer include ensuring that all CSU campuses consistently implement policies and procedures related to Title IX, as well as analyzing information related to Title IX-related complaints and outcomes, identifying any patterns, and making recommendations to resolve and improve prevention efforts, if needed. Given the purpose and responsibilities of this role and the Chancellor's Office's statutory authority to ensure that its campus programs and activities are free from discrimination based on sex and other protected characteristics, we would expect that the Chancellor's Office would take action to correct any concerns it identified through the campus reviews.

In 2017 the then-systemwide Title IX compliance officer notified the then-executive vice chancellor and general counsel of multiple concerns that had arisen from campus reviews, as the text box describes. In fact, some of the issues that she noted align with issues we identified in our current audit. However, the Chancellor's Office could not provide evidence of any actions it took to follow up on the areas of concern that it identified in its reviews.

Further, the Chancellor's Office did not ensure transparency when it conducted its past campus reviews. Instead of publicly reporting its findings, the Chancellor's Office reported them to campus counsel and classified the information as confidential based on the attorney-client privilege, which means they cannot be disclosed without the Chancellor's Office's consent. Attorney-client privilege enables clients to disclose information to their attorneys in full and receive legal advice without fearing that this information will be revealed to others. CSU's vice chancellor for human resources expressed concerns that publicizing the findings from campus reviews could inhibit the

The Chancellor's Office Previously Noted Concerns About Campuses' Compliance With Its Policy

In 2017 after it conducted 10 campus reviews, the Chancellor's Office documented concerns about the quality of campuses' sexual harassment investigations and their lack of compliance with relevant requirements in CSU policy. Some of these concerns involved the following:

- Multiple investigations that did not address all of the issues raised in the complaint.
- Many investigations that were sent back to campuses for further review or action because they did not properly analyze the evidence in light of CSU's policy definitions.
- Investigations that led to disciplinary or corrective action that the Chancellor's Office considered inappropriate.

Source: Former systemwide Title IX compliance officer letter to former executive vice chancellor.

fact-gathering process, in part by discouraging witnesses from coming forward, which in turn could undermine the ultimate goal of compliance reviews. However, because the Chancellor's Office lacks a public forum to discuss its reviews, the public cannot know what actions it has taken to identify and address issues related to sexual harassment at its campuses.

In contrast, CSU publicized findings and next steps resulting from two investigations in 2022 into its campuses' handling of sexual harassment complaints, one at Fresno State and another at San José State. Moreover, in February 2023, Fresno State released a Title IX task force recommendations report with details about the issues the task force identified. Publicizing these reports is a step in the right direction for transparency, and we would expect the Chancellor's Office to similarly publicize the findings of its future campus reviews to the extent that it can without divulging confidential information or increasing liability risk. It should also share the steps it plans to take to address any issues it identifies at campuses as a result of these reviews.

Please refer to pages 59–64 at the end of this report to find the recommendations that we have made as a result of these audit findings.

Recommendations

Officials at the Chancellor's Office explained that limited funding and resources are significant obstacles to addressing our concerns and implementing many of our recommendations. We believe that implementing some of our recommendations below, such as the creation of guidelines that clarify aspects of CSU's sexual harassment policy and its expectations of campuses in complying with that policy, would not be unduly burdensome. Moreover, the implementation of these recommendations would help staff carry out their existing responsibilities more easily and consistently. Nevertheless, we acknowledge that implementing other recommendations could require significant time and resources. For example, we believe that increasing staff positions in the systemwide Title IX unit would be particularly beneficial to improving CSU's systemwide oversight functions. Systemwide officials may also need to provide additional training to campuses for implementing some of our proposed recommendations. When implementing these recommendations, CSU should evaluate its needs for additional resources in the Chancellor's Office and at its campuses and should work to secure the necessary funding to support those resources.

The following are the recommendations we made to the Chancellor's Office as a result of our audit. Descriptions of the findings and conclusions that led to these recommendations can be found in the chapters of this report.

Initial Assessment and Investigation Procedures

To ensure that campuses consistently and appropriately justify and document their decisions about whether to conduct formal investigations, the Chancellor's Office should, by July 2024, create clearer and more comprehensive expectations for how campuses should perform and document their initial assessments of allegations. The written procedures or guidelines it develops should apply, at a minimum, to any report or complaint that includes allegations of possible sexual harassment involving an employee respondent and should do the following:

- Require campuses to determine whether a respondent has been the subject of multiple or prior reports of misconduct.

- Clarify how to assess the benefits and risks of conducting or not conducting an investigation when there are challenges with or ambiguities about a complainant's desire or ability to participate. Such an assessment might include applying more broadly the factors that CSU's policy already incorporates when a complainant explicitly requests that no investigation occurs.

- Provide guidance about attempting to identify or contact any potential complainants mentioned or discovered during the intake and initial assessment process and about evaluating the likelihood that an investigation could reveal new allegations, context, or information.

- Specify that if a campus decides not to conduct an investigation because a report or complaint fails to allege a sexual harassment policy violation, the campus must explain why there are clear indications that the alleged conduct, even if true, could not reasonably meet CSU's definition of *sexual harassment*.

- Require a thorough, documented rationale for campuses' decisions about whether to conduct an investigation that addresses, at a minimum, any applicable factors listed above and any other relevant factors in CSU's policy.

To ensure that campuses conduct consistent and effective investigations of allegations of sexual harassment, the Chancellor's Office should, by July 2024, establish more specific expectations for how investigators should structure their analyses of evidence and their determinations in sexual harassment investigation reports. The written procedures or guidelines should, at minimum, do the following:

- Specify how investigators should perform and document credibility evaluations.

- Require that before investigators assess whether the alleged conduct violated policy, they document an assessment of each allegation that establishes whether the alleged conduct likely occurred and that these assessments consider all relevant conduct for which the investigator has identified evidence.

- Require investigators to document analysis specific to each relevant component of CSU's sexual harassment definition that addresses whether conduct met or did not meet the particular component of the definition.

- Require that investigators' analyses and final determinations about whether conduct violated the sexual harassment policy take into account the cumulative effect of all relevant conduct found to have likely occurred.

To ensure that campuses' determinations about sexual harassment are consistent and appropriate, the Chancellor's Office should create and disseminate written guidance by July 2024 that provides a framework for how investigators should interpret each component of CSU's sexual harassment definition and how they should determine whether alleged conduct meets that definition. The guidance should include specific examples as necessary.

To ensure consistency in campuses' responses to sexual harassment allegations and mitigate the risk of inappropriate interference, the Chancellor's Office should amend CSU's sexual harassment policy or create other procedures by July 2024 to require a documented review and approval of the analyses and outcomes of each report of sexual harassment. In particular, the Chancellor's Office should specify the following:

- Unless resource constraints or other good causes exist, the campus Title IX coordinator should assign each case to another staff member or investigator. The coordinator should then document his or her review of each case, including certification that the case's resolution—such as the initial assessment or the investigation and related report, as applicable—aligns with policy requirements.

- For exceptions such as cases that the Title IX coordinator handles directly, another qualified reviewer should document his or her review and approval of the analyses and outcomes.

To ensure that campuses adequately address problematic behavior that does not meet the threshold of sexual harassment, the Chancellor's Office should, by January 2025, establish a systemwide policy or systemwide procedures for addressing this type of unprofessional or inappropriate conduct. At minimum, the Chancellor's Office should require that when campuses determine through an investigation that a respondent's conduct does not meet the threshold of sexual harassment, but that the conduct nevertheless occurred and was unprofessional or inappropriate, campuses make written findings specific to the unprofessional conduct and impose discipline or corrective action, as appropriate, based on the conduct.

To ensure the effectiveness of the informal resolution process, the Chancellor's Office should, by July 2024, provide additional guidance to campuses related to this process. In particular, the guidance should clarify how campuses should offer complainants information about possible remedies that address their concerns. For example, the Chancellor's Office could work with campuses to create a template for an informal resolution agreement that also includes examples of specific corrective action options or other outcomes that parties could consider when determining remedies.

Timeliness of Investigation and Discipline Processes

To improve the timeliness of campuses' responses to sexual harassment allegations, the Chancellor's Office should require all campuses to track key dates and timeline extensions related to reports of sexual harassment in a consistent manner by July 2024. For example, it could require the use of a tracking spreadsheet or automated alerts to ensure that campuses are aware of relevant deadlines and that they identify any trends in their timeliness of handling reports.

To better ensure the timeliness of investigations, the Chancellor's Office should identify a solution by July 2024 for ascertaining that campuses have adequate resources for conducting formal investigations. As part of this process, the Chancellor's Office should consider whether employing a pool of dedicated systemwide investigators who are external to campuses would help provide timely, consistent, and independent investigations for campuses when they choose not to investigate allegations themselves or lack the available internal resources to do so. Finally, once it has identified a solution, the Chancellor's Office should implement this solution.

To more effectively communicate the status of cases to the parties involved, the Chancellor's Office should amend CSU's sexual harassment policy by January 2025 to include specific requirements for campuses to provide regular status updates to complainants and respondents unless those parties request not to receive them. These updates should also communicate the outcomes of cases, including any associated disciplinary or corrective actions, to the extent possible under law. The Chancellor's Office should also consider developing or requiring campuses to develop a method for allowing complainants and respondents to check the status of their specific cases at any time through an online portal, dashboard, or similar means.

To ensure that campuses provide prompt discipline, the Chancellor's Office should provide guidance to campuses by July 2024 about best practices for initiating, carrying out, and documenting timely disciplinary or corrective actions after a finding of sexual harassment. Further, it should encourage campuses to communicate these principles to relevant decision makers. This guidance should include providing a prompt notice of pending disciplinary action to a respondent when applicable.

Case File Documentation

To ensure that campuses make and document appropriate efforts to address sexual harassment allegations, the Chancellor's Office should, by July 2024, develop procedures or guidelines that include a specific list of documents that the campus Title IX coordinator must maintain in a sexual harassment case file before closing the case. The Chancellor's Office should consider attaching these guidelines to the CSU sexual harassment policy. The list should include the following, at a minimum:

- Documentation of the campus's initial assessment of allegations and its rationale for whether or not to conduct an investigation.
- Any evidence relevant to the allegations and documentation of all interview notes or transcripts.
- If applicable, an informal resolution agreement signed by all parties and documentation of the agreed-upon outcomes.
- Any significant correspondence between Title IX staff and the parties, from the report stage through case closure, including emails and notices of allegations, investigation, extension, and outcome.
- If applicable, the preliminary investigation report or review of evidence and the final investigation report.
- Evidence of and specific details about the disciplinary or corrective actions that the campus took to resolve the case.

To improve the quality and consistency of campuses' data and case files, the Chancellor's Office should require that, by July 2026, all campuses use the same electronic case management system to securely maintain sexual harassment data and case files and ensure that all campuses' case management systems are also accessible to systemwide Title IX staff. In addition, the Chancellor's Office should develop and disseminate guidance for consistently tracking data in each campus's system, including requiring that each system include the same fields for entering relevant data such as key dates and corrective actions taken. The guidance should also ensure that campuses maintain data sufficient to identify and address any concerning patterns or trends related to repeat subjects, particular departments, specific student or employee populations, or similar issues.

Systemwide Data and Oversight

To improve CSU's systemwide response to sexual harassment, the Chancellor's Office should establish a process no later than July 2024 for regularly collecting and analyzing sexual harassment data—via annual Title IX reports or a similar mechanism—from all campuses to identify any concerning patterns or trends, such as those involving repeat subjects, particular academic departments, or specific student or employee populations. As a part of these efforts, it should also collect and analyze data related to the timeliness of campuses' responses to allegations. When it identifies concerning trends or patterns, the Chancellor's Office should share its findings with the campuses and offer guidance for addressing the issues in question. Finally, upon implementing the recommendation that all campuses use the same case management system, the Chancellor's Office should use these systems to collect and facilitate its analysis of these data.

To assist campuses in providing a harassment-free environment for their students and employees, the Chancellor's Office should, by July 2024, create a policy—such as an attachment to its sexual harassment policy—for conducting regular compliance reviews of its campus Title IX offices to determine whether they are complying with relevant portions of federal law, state law, CSU policy, and best practices for preventing, detecting, and addressing sexual harassment and related misconduct. The Chancellor's Office should publicize the results of these reviews to the extent possible considering confidentiality concerns, and it should similarly publicize any steps it has taken or plans to take to address areas of concern it identifies. In preparation for performing this work, the Chancellor's Office should determine the number of additional staff that it will need to conduct these reviews.

To encourage systemwide adoption of best practices, the Chancellor's Office should, by January 2025, make revisions to its systemwide prevention policy or otherwise provide written guidance to campuses reflecting comprehensive best practices for preventing, detecting, and addressing sexual harassment. To develop these best practices, it should consult sources such as the U.S. Department of Justice's 2021 resolution agreement with San José State. The best practices should cover at least the following:

- How campuses should maintain accessible options for reporting sexual harassment.
- How campuses can widely disseminate information about their sexual harassment reporting options and related processes through methods such as campus-wide emails, social media platforms, on-campus postings, and student handbooks.
- How campuses can develop and distribute streamlined informational materials that explain key aspects of their processes related to sexual harassment.
- How campuses can monitor whether students and employees have completed required training.
- How campuses can most effectively make use of climate surveys through steps such as surveying both students and employees, designing surveys to assess the effectiveness of their sexual harassment prevention and education efforts, and establishing a documented process for taking action in response to survey findings.

Letters of Recommendation

To ensure that campuses do not endorse employees who have been found responsible for sexual harassment, the Chancellor's Office should amend its policy for letters of recommendation by July 2024 to prohibit official positive references for all employees or former employees with findings of sexual harassment, including those who have received less severe discipline than termination, such as suspension or demotion. Alternatively, the Chancellor's Office could consider amending its policy for letters of recommendation to require that official positive references for employees or former employees with findings of sexual harassment that did not lead to separation include a disclosure of the employee's violation of CSU's sexual harassment policy.

We conducted this performance audit in accordance with generally accepted government auditing standards and under the authority vested in the California State Auditor by Government Code section 8543 et seq. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

GRANT PARKS
California State Auditor

July 18, 2023

Staff: Nicholas Kolitsos, CPA, Audit Principal
Michelle Sanders, PMP
Aaron Fellner
Karen Wells

Trunice Anaman-Ikyurav
Elizabeth Crachiolo, PhD
Daniella Jacobs
Nicole Madera, MPP
Rebecca McNeil
Nick Versaci
Ashley Yan

Legal Counsel: Katie Mola

Appendix A

Sexual Harassment Reports Against Employees in the CSU System

The Audit Committee directed us to identify the number of sexual harassment reports against employees at the Chancellor's Office and at each CSU campus during the past five years and to determine the following: whether CSU investigated those reports; whether the reports were substantiated; whether respondents were involved in multiple reports, and if so, how many; and whether CSU resolved reports in a timely manner. The data we initially collected electronically from a selection of campuses had significant limitations, such as a lack of information about whether reports were against employees or were related to sexual harassment. Therefore, we collected additional information from every campus to assemble the most complete and accurate information available. For campuses that do not maintain complete logs or databases on sexual harassment complaints, we compiled the information by visiting campuses and reviewing hard-copy or electronic case files. We display the resulting information in the tables that follow and note that we define a *report* of sexual harassment as a report or an allegation of sexual harassment.[15]

[15] Given the timing of when we received this information, the data for Fresno State are through October 2022, and the data for San José State and Sonoma State are through November 2022.

Table A.1
Sexual Harassment Reports Against Employees of 23 Campuses and the Chancellor's Office From 2018 Through 2022

			SEXUAL HARASSMENT REPORTS					
CAMPUS	STUDENT ENROLLMENT FALL 2021	EMPLOYEE HEAD COUNT FALL 2021	TOTAL REPORTS	2018	2019	2020	2021	2022
Chancellor's Office	–	667	5	1	3	0	0	1
Bakersfield	10,624	1,288	23	11	5	0	0	7
Channel Islands	6,437	918	39	14	5	1	9	10
Chico	15,421	1,946	37	8	9	3	6	11
Dominguez Hills	16,916	1,732	35	10	15	2	3	5
East Bay	13,499	1,744	30	7	11	2	7	3
Fresno	24,946	2,608	83	19	22	13	4	25
Fullerton	40,087	3,734	223	81	62	17	21	42
Humboldt	5,739	1,126	30	8	2	3	11	6
Long Beach	39,434	4,507	70	5	4	17	22	22
Los Angeles	27,029	2,805	39	7	18	2	4	8
Maritime Academy	880	284	10	0	0	4	4	2
Monterey Bay	6,995	1,045	10	2	2	0	1	5
Northridge	38,551	3,992	89	21	26	16	9	17
Pomona	29,103	2,718	79	26	18	4	12	19
Sacramento	31,573	3,317	36	4	15	7	2	8
San Bernardino	19,182	2,190	27	7	11	4	1	4
San Diego	35,732	4,573	17	3	7	1	3	3
San Francisco	26,620	3,581	94	28	27	6	14	19
San José	33,848	3,898	84	13	10	20	13	28
San Luis Obispo	22,028	2,815	106	22	26	15	24	19
San Marcos	14,503	1,792	31	9	8	0	9	5
Sonoma	7,182	1,210	43	8	8	5	11	11
Stanislaus	10,028	1,344	11	1	1	0	3	6
Total			**1,251**	**315**	**315**	**142**	**193**	**286**

Source: Sexual harassment reports data and information from each campus and the Chancellor's Office.

Note: The campuses did not consistently count the number of reports of sexual harassment that they received. For example, campuses sometimes counted cases involving multiple complainants as a single report, while in other instances, they counted the same type of report as multiple reports. Moreover, some campuses could not provide us with enough information to determine whether reports were in our audit scope, so we did not include those reports in the table. As a result, we found that the data related to the number of reports of sexual harassment are unreliable. Nonetheless, we present the results in this table for informational purposes.

Table A.2
Sexual Harassment Investigations of Employees From 2018 Through 2022

CAMPUS	TOTAL NUMBER OF REPORTS OF SEXUAL HARASSMENT	TOTAL NUMBER OF REPORTS INVESTIGATED	TOTAL NUMBER OF REPORTS SUBSTANTIATED
Chancellor's Office	5	2	0
Bakersfield	23	17	2
Channel Islands	39	7	4
Chico	37	14	7
Dominguez Hills	35	13	5
East Bay	30	7	3
Fresno	83	11	6
Fullerton	223	17	8
Humboldt	30	5	2
Long Beach	70	3	0
Los Angeles	39	14	8
Maritime Academy	10	5	3
Monterey Bay	10	4	1
Northridge	89	13	3
Pomona	79	9	2
Sacramento	36	19	13
San Bernardino	27	5	2
San Diego	17	7	3
San Francisco	94	22	4
San José	84	24	10
San Luis Obispo	106	7	3
San Marcos	31	13	2
Sonoma	43	7	4
Stanislaus	11	9	3
Total	**1,251**	**254**	**98**

Source: Sexual harassment reports data and information from each campus and the Chancellor's Office.

Note 1: Some campuses did not finish or did not document the outcome of certain investigations, so we did not include these reports in our counts of investigations that were substantiated. As a result, and because the campuses also did not consistently count the number of reports of sexual harassment that they received, we found that the data related to the number of reports investigated and substantiated are unreliable. Nonetheless, we present the results in this table for informational purposes.

Note 2: Some investigations that we counted in the total number of reports investigated remained open after 2022. As a result, we did not have information on whether investigations substantiated these reports. Therefore, we did not include these reports in our counts of investigations that were substantiated.

Table A.3
Number of Employees Who Were the Subject of Multiple Sexual Harassment Reports From 2018 Through 2022

CAMPUS	TOTAL NUMBER OF EMPLOYEES WHO WERE THE SUBJECT OF MULTIPLE REPORTS OF SEXUAL HARASSMENT	EMPLOYEES WHO WERE THE SUBJECT OF TWO REPORTS OF SEXUAL HARASSMENT	EMPLOYEES WHO WERE THE SUBJECT OF THREE REPORTS OF SEXUAL HARASSMENT	EMPLOYEES WHO WERE THE SUBJECT OF FOUR OR MORE REPORTS OF SEXUAL HARASSMENT
Chancellor's Office	0	0	0	0
Bakersfield	4	2	2	0
Channel Islands	7	6	1	0
Chico	2	2	0	0
Dominguez Hills	4	3	1	0
East Bay	5	5	0	0
Fresno	11	10	1	0
Fullerton	31	15	3	13
Humboldt	2	1	0	1
Long Beach	10	6	0	4
Los Angeles	4	3	1	0
Maritime Academy	2	2	0	0
Monterey Bay	0	0	0	0
Northridge	8	6	2	0
Pomona	8	6	2	0
Sacramento	7	4	2	1
San Bernardino	1	1	0	0
San Diego	1	0	0	1
San Francisco	14	8	3	3
San José	6	4	0	2
San Luis Obispo	20	15	3	2
San Marcos	4	2	0	2
Sonoma	7	6	1	0
Stanislaus	1	0	0	1
Total	**159**	**107**	**22**	**30**

Source: Sexual harassment reports data and information from each campus and the Chancellor's Office.

Note: Because the campuses counted reports of sexual harassment inconsistently and sometimes could not provide us with enough information to determine whether reports were in our audit scope, we found that the data related to the number of employee respondents subject to multiple reports are unreliable. Nonetheless, we present the results in this table for informational purposes.

Table A.4
Sexual Harassment Reports Against Employees Resolved From 2018 Through 2022
Date of Report Compared to Date of Resolution

CAMPUS	REPORTS RESOLVED WITHIN 0–100 DAYS	REPORTS RESOLVED WITHIN 101–200 DAYS	REPORTS RESOLVED AFTER 200 DAYS
Chancellor's Office	4	0	0
Bakersfield	11	3	6
Channel Islands	27	3	8
Chico	26	8	3
Dominguez Hills	24	4	3
East Bay	17	5	1
Fresno	72	7	1
Fullerton	126	33	51
Humboldt	17	1	2
Long Beach	65	3	1
Los Angeles	21	8	0
Maritime Academy	7	1	1
Monterey Bay	6	0	1
Northridge	60	8	15
Pomona	61	2	11
Sacramento	28	3	3
San Bernardino	24	0	1
San Diego	11	4	2
San Francisco	38	12	4
San José	45	20	9
San Luis Obispo	91	10	5
San Marcos	13	6	1
Sonoma	31	4	3
Stanislaus	2	2	7
Total	**827**	**147**	**139**

Source: Sexual harassment reports data and information from each campus and the Chancellor's Office.

Note 1: The total number of resolved reports in Table A.4 and the total number of reports for each campus in Tables A.1 and A.2 may not be equal because some reports remained open after 2022, and others lack clear resolution dates.

Note 2: CSU's sexual harassment policy from 2015 through 2022 generally allowed up to 100 working days for investigations. However, its current policy allows for extensions for good cause. We therefore used 100 days as a benchmark for the resolution of reports in this table but also included resolutions that took 101 to 200 days and 201 or more days. We also address in Chapter 1 whether CSU resolved reports in a timely manner at the four campuses we reviewed.

Note 3: The campuses did not consistently document the dates that they resolved sexual harassment reports. For example, some campuses did not record the date that they resolved certain reports. For some of these cases, we used our judgment to determine the resolution dates based on our review of case files. However, for other cases, this information was not available, so the resolution dates for those reports remain unclear and therefore are not included in the table. As a result, the campuses' data related to the length of time taken to resolve complaints are unreliable. Nonetheless, we present the results in this table for informational purposes.

Blank page inserted for reproduction purposes only.

Appendix B

Scope and Methodology

The Audit Committee directed the California State Auditor to conduct an audit of the CSU system's handling of sexual harassment complaints involving executives, faculty, and staff at the Chancellor's Office, Fresno State, San José State, and Sonoma State. Table B below lists the objectives that the Audit Committee approved and the methods we used to address them.

Table B
Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed laws, rules, and regulations related to CSU's handling of sexual harassment allegations.
2	Determine the mission and role of CSU's systemwide Title IX office and evaluate the processes it has in place to provide oversight and ensure consistency and timeliness in CSU's response to sexual harassment allegations, including its compliance with federal law and use of best practices.	• Identified federal and state laws applicable to sexual harassment allegations and the handling of sexual harassment complaints. • Reviewed CSU's systemwide Title IX policies and procedures regarding sexual harassment allegations and determined whether they comply with the requirements in federal and state law, as well as best practices. • Identified the mission and role of CSU's systemwide Title IX officer and evaluated its systemwide Title IX reviews to determine whether those reviews provide adequate oversight and ensure consistency and timeliness of responses to sexual harassment allegations across campuses.
3	Determine whether CSU has adequate systemwide policies and procedures in place for preventing, detecting, and addressing sexual harassment. In making this determination, review notices to students and employees about how to report allegations, efforts to keep victims of alleged harassment informed about the status of a complaint, and policies about employee obligations to report alleged harassment.	• Identified key best practices for preventing, detecting, and addressing sexual harassment at educational institutions. • Interviewed CSU personnel and examined documents to determine whether CSU's systemwide policies, as well as campus practices, align with the identified best practices, including those related to notifying students and employees of options for reporting allegations. • For the selection of complaints analyzed in Objective 6, determined whether CSU kept complainants informed about the status of complaints.
4	Review CSU's process for investigating alleged sexual harassment. Determine whether the process ensures that the investigatory process is free from interference and identify any needed improvements.	Evaluated CSU's systemwide sexual harassment policy to determine whether it ensures that the investigatory process is free from interference. In making this determination, we also considered any potential interference issues with the complaints analyzed in Objective 6 to determine whether changes to CSU's current policy or processes are warranted.

continued on next page . . .

	AUDIT OBJECTIVE	METHOD
5	To the extent possible, identify the total number of sexual harassment complaints against employees of the CSU system during the past five years and determine the following: a. The number of complaints filed against employees at the Chancellor's Office and at each CSU campus.	• Obtained the total number of reports of sexual harassment from the Chancellor's Office from 2018 through 2022, and manually assembled data from those reports. • Obtained a list of sexual harassment reports from Fresno State, San José State, and Sonoma State from 2018 through late 2022. When data proved unreliable or incomplete, we manually assembled complete or updated information from case files. • Obtained or created lists of sexual harassment reports at the other 20 CSU campuses from 2018 through 2022. When data proved unreliable or unavailable, we manually assembled or updated information from case files.
	b. Whether CSU initiated an investigation of those complaints, how many it substantiated, and whether alleged perpetrators were involved in multiple complaints and, if so, how many.	Evaluated the list of sexual harassment reports for the Chancellor's Office and the 23 campuses from 2018 through 2022 to determine whether CSU initiated an investigation of these reports, how many it substantiated, and whether and how many respondents were involved in multiple complaints.
	c. Whether CSU resolved those complaints in a timely manner.	• For Fresno State, San José State, Sonoma State, and the Chancellor's Office, compared the length of time of sexual harassment investigations to required time frames in CSU policy to determine whether the investigations were resolved in a timely manner. • Evaluated the list of sexual harassment reports for the Chancellor's Office and the 23 campuses from 2018 through 2022 to determine the length of time to resolve the allegations.
6	At the Chancellor's Office and at each of the three campuses, for a selection of substantiated sexual harassment allegations in which the alleged perpetrator was a CSU employee, perform the following: a. Identify and assess any differences in CSU's approach to investigations involving various categories of employees, including faculty, nonfaculty staff, administrators, and executives.	• Made a judgmental selection of 40 cases of substantiated and unsubstantiated sexual harassment allegations against CSU employees, including cases involving different categories of employees, such as faculty, nonfaculty staff, administrators, and executives, and involving both formal and informal discipline. We also considered other factors in making our selection, such as the reporting dates of the alleged conduct and the types of case outcomes that occurred. Our selection consisted of 11 cases at Campus A, 12 cases at Campus B, 10 cases at Campus C, and seven cases at Campus D. • For the selection of substantiated and unsubstantiated allegations, reviewed case file documentation to identify any differences in the four campuses' approaches to investigations involving different categories of employees.
	b. Identify and assess any differences among the Chancellor's Office and the three campuses in their handling of investigations.	For the selection of substantiated and unsubstantiated allegations, reviewed case file documentation to identify any differences among the Chancellor's Office and the three campuses in their handling of investigations.
	c. Assess the consistency, reasonableness, and timeliness of any discipline CSU administered in those cases. To the extent possible, assess whether the discipline issued was generally proportional to the conduct, adequate to deter future harassment, and aligned with policies, laws, or best practices.	For cases in which CSU administered any formal or informal discipline, reviewed case file documentation and personnel files to assess the consistency and timeliness of the discipline. As discussed in the report, because of limitations in the documentation of rationale for discipline that the campuses administered, we did not assess whether discipline was reasonable or generally proportional to the conduct. We assessed whether the discipline issued was adequate to deter future harassment and aligned with policies or other criteria.

	AUDIT OBJECTIVE	METHOD
7	Review systemwide policies—and the processes that the Chancellor's Office and three campuses followed—for administering retreat rights or other postemployment benefits and compensation to CSU employees and determine the following:	• Obtained employee agreements for current executives across all campuses and the Chancellor's Office and determined which executives have retreat rights or are eligible for executive transition programs. • Reviewed available policies for CSU systemwide, the Chancellor's Office, and each of the named campuses for administering retreat rights and other benefits and compensation.
	a. To the extent possible, which executive positions across the CSU system have retreat rights as part of their employment agreements.	
	b. How CSU determines the appropriate extent of retreat rights and related compensation to offer its employees and, to the extent possible, whether CSU's approach is consistent with comparable public university systems.	• Reviewed available policies for CSU systemwide, the Chancellor's Office, and each of the named campuses for administering retreat rights, executive transition programs, and other benefits and compensation. • Examined publicly available policies for retreat rights and similar compensation at other universities and university systems, including the University of California, University of North Carolina, Texas A&M University, and New Mexico State University. Because we did not identify publicly available policies from these universities on executive transition programs, we only compared CSU's approach to establishing the appropriate extent of retreat rights and similar compensation to these universities.
	c. To the extent possible, the number of instances over the past five years at the Chancellor's Office and the three campuses in which CSU granted retreat rights or related compensation to employees, including those accused of sexual harassment.	Obtained information specifying which employees at the Chancellor's Office and at each of the named campuses have been provided retreat rights. We cross-referenced the information with data for sexual harassment allegation respondents at the Chancellor's Office and at each named campus to determine how many respondents have retreat rights.
	d. The reasonableness of the actions CSU took under 7(c), and whether CSU should make any changes to relevant provisions of CSU employment agreements and compensation practices.	We did not identify any individuals at the Chancellor's Office and at each of the named campuses who were subject to a finding of sexual harassment and had subsequently retreated to a faculty position.
8	Assess any CSU policies or practices related to letters of recommendation for employees who have been found to have perpetrated sexual harassment.	• Evaluated CSU's current policy on letters of recommendation to determine whether it prohibits references for employees who have engaged in sexual harassment, and we identified any needed improvements to this policy. • For employees who have been accused of sexual harassment at the Chancellor's Office and each of the named campuses, obtained and evaluated available settlement agreements that contain clauses about letters of recommendation. • Determined whether any cases reviewed under Objective 6 had findings of sexual harassment in which the respondent would be able to obtain a positive letter of recommendation according to the policy.
9	Review and follow up on relevant findings and recommendations from prior audits or reviews either performed or contracted by CSU, the California State Auditor, or other entities.	• Followed up on CSU's implementation of the recommendation related to its review of campuses' compliance with Title IX requirements from our June 2014 report, *Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents*, Report 2013-124. • Documented findings and recommendations from recent reviews at two CSU campuses, Fresno State's Title IX task force, and other recent reviews relevant to sexual harassment, and we considered these findings and recommendations when developing our recommendations.
10	Review and assess any other issues that are significant to the audit.	None identified.

Source: Audit workpapers.

Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily obligated to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. In performing this audit, we obtained electronic data files from the Chancellor's Office and the CSU campuses related to sexual harassment reports from 2018 through 2022, as available. To evaluate the available data, we interviewed staff knowledgeable about the data and performed testing of the data. For example, we cross-referenced the data that we received from the campuses with electronic and physical files, as available, to assess the data's completeness and accuracy. We found some incompleteness and inaccuracies in the data, but we updated the data with the accurate information when possible.

Although we updated or manually created data for the campuses in Appendix A with the information that was available, we still found inconsistencies across the campuses that makes the data unreliable for our purposes. For example, some campuses used inconsistent approaches to count the number of sexual harassment reports they received, sometimes counting a report involving multiple complainants against a single respondent as a single report, while at other times counting the same type of report as multiple reports. Additionally, when campuses documented the dates they closed cases, we used this date as the resolution date unless there was another entry that indicated that the case was closed sooner. However, campuses sometimes did not record the dates that they resolved certain complaints, so we had to use our judgment to determine these dates based on the available records.

Because of these inconsistencies, we found the data to be unreliable for our purposes. While this determination may affect the precision of the numbers we present, we use these numbers for informational purposes only; we do not present findings, conclusions, or recommendations on them. Further, because we performed detailed testing on the timeliness of cases from Fresno State, San José State, Sonoma State, and the Chancellor's Office, we present our findings on the timeliness for those campuses on pages 30–34 and 42–43.

In addition to the general concerns we note above, we found that the Los Angeles, San Diego, and San Francisco campuses did not consistently maintain data or source documentation, such as case files, on sexual harassment reports from 2018 through 2022. Although this determination may affect the precision of the numbers we present, we use these numbers for informative purposes only; we do not present findings, conclusions, or recommendations on them.

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR

BAKERSFIELD
CHANNEL ISLANDS
CHICO
DOMINGUEZ HILLS
EAST BAY
FRESNO
FULLERTON
HUMBOLDT
LONG BEACH
LOS ANGELES
MARITIME ACADEMY
MONTEREY BAY
NORTHRIDGE
POMONA
SACRAMENTO
SAN BERNARDINO
SAN DIEGO
SAN FRANCISCO
SAN JOSÉ
SAN LUIS OBISPO
SAN MARCOS
SONOMA
STANISLAUS

June 16, 2023

Mr. Grant Parks
State Auditor
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Dear Mr. Parks:

Thank you for the opportunity to review and respond to the draft audit report on the CSU's handling of sexual harassment complaints. We sincerely appreciate the time and effort the California State Auditor (CSA) devoted to preparing for and conducting the audit, as well as writing the report.

The CSU's implementation of the recommendations from the CSA and those from Cozen O'Conner's Systemwide Assessment of the CSU's Title IX and DHR programs and services (directed by the Board of Trustees), will strengthen accountability and the CSU's ongoing work in prioritizing prevention, mitigating barriers to reporting, and ensuring appropriate institutional response and support systems.

We agree with and will implement the recommendations provided in the audit report, as well as those identified in the Cozen assessment, to strengthen our culture of care and compliance and advance the CSU's core values of equity, diversity, and inclusion.

Sincerely,

Jolene Koester

Jolene Koester
Interim Chancellor

401 GOLDEN SHORE • LONG BEACH, CALIFORNIA 90802-4210 • (562) 951-4700